

1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE MIDDLE DISTRICT OF ALABAMA  
3 EASTERN DIVISION  
4  
5 DAVID DAVIS,  
6 Plaintiff,  
7 vs. CASE NO.: 3:06cv544-WHA  
8 PHENIX CITY, ALABAMA, et al.,  
9 Defendants.

11 VOLUME II  
12 \* \* \* \* \* \* \* \* \* \* \* \*  
13 JURY TRIAL PROCEEDINGS  
14 \* \* \* \* \* \* \* \* \* \* \* \*  
15 BEFORE THE HONORABLE W. HAROLD ALBRITTON, UNITED  
16 STATES DISTRICT JUDGE, and a jury, at Opelika, Alabama, on  
17 Tuesday, March 4, 2008, commencing at 1:23 p.m.

18 APPEARANCES:

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## VOLUME INDEX

12	DAVID PAUL DAVIS	
	FURTHER CROSS BY MR. MCKOON	225
13	REDIRECT BY MR. STEELE	241
14	JEFFREY SCOTT HARDIN	
	DIRECT BY MR. STEELE	244
15	CROSS BY MR. MCKOON	273
	REDIRECT BY MR. STEELE	281
16	RECROSS BY MR. MCKOON	288
17	ANNE LAND	
	DIRECT BY MR. BROWN	290
18	CROSS BY MR. MCKOON	310
	REDIRECT BY MR. BROWN	321
19	WILLIAM MYRON PITTS, JR.	
20	DIRECT BY MR. BROWN	324
	CROSS BY MR. MCKOON	341
21	REDIRECT BY MR. BROWN	349
22	KARL TAYLORSON	
	DIRECT BY MR. BROWN	352
23	CROSS BY MR. MCKOON	367

## VOLUME INDEX, Continued

2	BRANDON LYNN SHEETS (via deposition)	
	DIRECT BY MR. WOODLEY	377
3	CROSS BY MR. MCKOON	388
	REDIRECT BY MR. WOODLEY	405
4	RECROSS BY MR. MCKOON	407

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6 (The following proceedings were heard before the Honorable  
7 W. Harold Albritton, United States District Judge, and a  
8 jury, at Opelika, Alabama, on Tuesday, March 4, 2008,  
9 commencing at 1:23 p.m.:)

10 (Chambers conference, as follows:)

11                   THE COURT: I've got a thing I wanted to take up with  
12 y'all. I don't know whether either side had something you  
13 wanted to take up with me. Do you?

14 MR. STEELE: We do have a few items.

15 THE COURT: All right. Why don't I hear from you.

16 MR. STEELE: Okay. We have some questions for  
17 clarification or at least, at a minimum, to make sure that we  
18 have our objection on the record pertaining to some evidentiary  
19 rulings yesterday afternoon, if we understood them properly.  
20 The first is, as I understand it, the Court's concluded that  
21 there will be -- there's no issue that should be presented to  
22 the jury with respect to the question of whether the telephone  
23 call to the mayor created disruption.

24 THE COURT: Let me interrupt you, because that's  
25 exactly what I wanted to take up with y'all myself on the

1 record. Is there something else unrelated to that that we can  
2 handle before we get into that?

3 MR. STEELE: There is one that's unrelated to that. My  
4 second one was also related to that, so I'll skip that. But on  
5 the last one, as I understand it, you indicated yesterday that  
6 you would allow the decision maker or makers to testify in  
7 regard to the -- we'll call it the prior offenses as listed in  
8 that exhibit to the extent that they relied on that information  
9 in making their decision. And we wanted to make sure our  
10 objection to that is plain on the record.

11 In ruling for -- ruling on the motion in limine as well  
12 as the motion for summary judgment, the Court concluded with  
13 respect to the Kristin Kennedy incident, which is one of those  
14 incidents -- the Court concluded that it was both irrelevant to  
15 the first cause of action for freedom of speech and also that it  
16 was prejudicial -- so even if there was some relevancy, it's  
17 outweighed by the prejudicial value -- and that it would be  
18 admitted, if at all, under the second claim for free  
19 association. And the Court even invited us, if we wished, to  
20 seek a limiting instruction.

21 So I'm very concerned to hear you say that you're  
22 allowing it in. And I don't mean any disrespect, Your Honor --

23 THE COURT: Don't worry about that.

24 MR. STEELE: -- when I say that between the date of  
25 your decision on those motions, which I believe was Thursday,

1 perhaps Wednesday, and today, that type of information did not  
2 become any more relevant than it was when you made the  
3 decision. It didn't become any less prejudicial than it was  
4 when you made the decision. And, you know, the mere dismissal  
5 of the second cause of action does not convert irrelevant,  
6 prejudicial evidence suddenly into relevant, admissible  
7 evidence. So we object to that conclusion. I respect that you  
8 get to make the call. But we wanted a chance to express that to  
9 you, because we were quite concerned about that.

10 THE COURT: All right. Let me make clear what I was  
11 saying, which I think is consistent with what I have ruled  
12 before, or at least not inconsistent with -- is that this  
13 phone? I think it is. I don't know.

14 The document has been introduced in evidence. The  
15 plaintiff has talked about it and has said that was handed to  
16 him, and he was told that was the reason that he was  
17 terminated. The document is in. It's not my intention -- and  
18 also, he has -- he has testified and you, Mr. Steele, in  
19 opening, have emphasized the idea that he was fired for one  
20 little five-minute telephone call and that was it. Well, that's  
21 not the whole story.

22 I'm not going to admit independent evidence or  
23 testimony about the facts of the Kennedy incident or anything  
24 else. We'd be trying the Kennedy incident if we did that.  
25 However, the defendants' position has consistently been that he

1 would not have been fired just for the telephone call if it had  
2 not been for all of this past history. In fact, if it hadn't  
3 been for the past history, I -- they've argued at one time that  
4 he might or probably would have been disciplined in some way,  
5 but that it would have been short of termination.

6           With the plaintiff having made -- having made a  
7 contention that could be taken by the jury and by me, based on  
8 what was said, that all that he did after eight years on the  
9 force was talk to the mayor in a little five-minute innocuous  
10 telephone conversation and for that his whole career was ruined  
11 and his life was ruined and he was terminated for that one  
12 little telephone call, that's not the whole story. And I'm  
13 going to let the decision makers not talk about what the Kennedy  
14 incident was, not talk about all of these various things and not  
15 bring in Kennedy or anybody else to talk about this, but say  
16 what's on that form that they gave him when they told him that's  
17 your reason.

18           They may say they told him other reasons. I don't know  
19 what they're going to say about what they told him. He says  
20 that's all they told him. They may disagree with that, say they  
21 told him different things; I don't know. But I think it's fair  
22 game and appropriate for them to say that if it had not been for  
23 his past history of these various things that are listed on  
24 there, he'd still have his job.

25           Now, whether they believe that or not or I believe it

1 or not, I don't know; but I think that that's been made an issue  
2 in the case. And I don't view that -- as long as it's limited  
3 to not trying the truth or not truth of those incidents, I think  
4 the plaintiff can testify if he wants to that some of these were  
5 just little minor things that he was being picked on for or  
6 whatever. But I'm not going to have this telephone conversation  
7 just be one thing in a complete vacuum.

8 MR. STEELE: So I understand properly -- I want to make  
9 sure that everybody has an understanding of the scope.

10 THE COURT: So do I.

11 MR. STEELE: The decision maker on the stand could  
12 testify that in addition to the phone call, I took into  
13 consideration items listed on the remainder of that document.  
14 But the decision maker wouldn't, for example, be able to go down  
15 that list and explain to the jury what those different items  
16 are; that this item involved, you know, an accusation with  
17 respect to Kristin Kennedy that plaintiff did such-and-such;  
18 this item involved, you know, reports that plaintiff did this or  
19 that.

20 THE COURT: Well, it's between those two things. I  
21 won't restrict them from saying we considered the items on this  
22 paper and that's it. I would allow them to say what the items  
23 on the paper are and that we considered these, but not go into  
24 Kristin Kennedy was so-and-so and what the facts were, that  
25 there was an incident that is referred to in here as -- I've

1 forgotten how it's referred to on the form, but that that was  
2 taken into consideration, not facts beyond that unless they say  
3 they talked to -- to him at the time about the details. He said  
4 they didn't. I don't know whether they -- I just don't know  
5 whether they claim they did talk to him more about it. If they  
6 do, I think that would be a proper response to his testimony.

7 MR. STEELE: Well, if the witness is limited to reading  
8 those items and the description is limited to the description  
9 that's on that document, then it's unlikely that we have -- have  
10 a problem with that. If it goes beyond that to describing the  
11 incidents, we would strongly object to that because it would be  
12 both irrelevant and highly prejudicial to the First Amendment  
13 free speech claim and would effectively be expanding this case  
14 into however many minitrials on these things. It would really  
15 force us to put the plaintiff on, probably, to explain some of  
16 these. And the jury is going to be left figuring out, is it all  
17 that bad that he told somebody you owe me 25, meaning push-ups,  
18 and have to go through each and every one of those that the  
19 Court has already ruled is not relevant to the First Amendment  
20 free speech claim. Secondly --

21 THE COURT: I think I've agreed with what you're  
22 saying, but --

23 MR. STEELE: Well, I just want to make sure.

24 THE COURT: Let me see what Mr. McKoon says.

25 MR. MCKOON: Judge, I mean I understand -- I think I

1 understand your ruling. And the reason I didn't go any further  
2 with the plaintiff yesterday than I did was for that reason.  
3 What I thought your ruling was, was that the decision makers,  
4 who in this case are going to be Mr. Hunter, Mr. Waters, and  
5 Bubba Roberts, that at the time they made their final decision  
6 in this case on termination, that they reviewed the things that  
7 are summarized on this piece of paper. Now, I can tell you for  
8 a fact that what I would expect them to say is, you know, we  
9 did, and we went through his personnel file and that's how all  
10 that stuff got on here. I don't even -- if the Court tells me  
11 to -- I mean I'll tell them not to get into any detail about any  
12 incident.

13 You know, if -- if -- you know, if all we're limited --  
14 if we're just limited to saying, okay, this was insubordination  
15 on group II, that's fine. We'll do that. You know what I  
16 mean? I'm not trying to -- I don't want blow this trial out  
17 into a bunch of minitrials. I'm not trying to do that. I  
18 understand the Court wants these questions answered, and I  
19 appreciate you wanting to be fair about it in at least allowing  
20 us to not leave the impression in the mind of the jurors that,  
21 like you said, he was eight years and all the sudden he made a  
22 phone call, and that was the only reason he's gone.

23 THE COURT: Well, the insubordination that you're  
24 talking about, that was the meeting with the press, wasn't it?

25 MR. MCKOON: No, sir.

1                   THE COURT: Oh, okay.

2                   MR. MCKOON: It was not. He was counseled for that.

3 And I'm not sure it's under insubordination. It's under --  
4 threatening or intimidating a fellow employee was the Kristin  
5 Kennedy incident, and I believe that's what it says on that  
6 line.

7                   THE COURT: Okay. What I'm --

8                   MR. MCKOON: But that was the other group II offense,  
9 the Kristin Kennedy incident. The meeting with the press --

10                  THE COURT: Let me interrupt you just a minute.

11                  MR. MCKOON: Sure.

12                  THE COURT: What I was saying and intended to say was  
13 that they could say they went through the personnel file, they  
14 put the things on this form that entered into the decision.

15                  MR. MCKOON: That is correct.

16                  THE COURT: Just going down, one of them was a past  
17 whatever it was violation, based on whatever the language is in  
18 that, and then move on.

19                  MR. MCKOON: That's fine. I have no problem with that.

20                  THE COURT: That's what you are saying, isn't it?

21                  MR. STEELE: That's what we're saying.

22                  THE COURT: Okay.

23                  MR. STEELE: On that. However, here's the "however"  
24 that I started a moment ago. Here's the other concern with  
25 that, is that Your Honor said several times that it's relevant

1 to let the jury know about these other events. And my concern  
2 with that is, as Your Honor said yesterday -- and there's really  
3 no question as a matter of law -- it's not relevant that the  
4 employer may have had a dozen reasons for taking an answer -- or  
5 taking an action as long as the protected speech was a  
6 substantial or motivating reason. And in this case, you've  
7 indicated that you're waiting to hear all of the evidence. But  
8 based upon what you saw in relationship to summary judgment, it  
9 doesn't appear that there's even a question as to that. So I  
10 guess I'm a bit confused on why that's relevant at all and --

11                   THE COURT: All right. Let me tell you. I -- in my  
12 opinion, it comes in because of the way the plaintiff's case has  
13 been presented, which suggests that the telephone call was the  
14 only thing that this person had done that resulted in that, and  
15 that's not so. It was a substantial and motivating factor. I  
16 think when all the evidence is in, that it will be. They said  
17 that -- I mean that's why they fired him, but not only because  
18 of that. So the law is that it doesn't have to be the only  
19 reason. All it has to be is a substantial or motivating. Your  
20 case at this point suggests that it was the only reason, and  
21 that's not so.

22                   MR. STEELE: Well --

23                   THE COURT: Now, what you've put on itself may not have  
24 been relevant in this case, but it has come into the -- into the  
25 case.

1                   MR. STEELE: Well, Your Honor, I won't disagree with  
2 you on the only reason, although I don't recall using that  
3 phrase, only reason.

4                   THE COURT: I don't think you did. But you suggested  
5 that.

6                   MR. STEELE: What we suggested, because there has been  
7 no stipulation on the fact, that the phone call and the  
8 conversation was a substantial motivating reason. And we have  
9 to present that and argue that because we do not have a  
10 stipulation on that. We shouldn't be penalized because there's  
11 no stipulation on that and say that that opens the door widely.  
12 If the door is open just a small amount in the way that you've  
13 described it, you know, I guess we probably wouldn't object to  
14 that. We would reserve, I guess, our right to it when we see  
15 how it actually comes out in the courtroom.

16                  THE COURT: Okay. Then let's move on to the next  
17 thing.

18                  MR. STEELE: Well, the other issues related to the  
19 question about evidence or issues to the jury concerning  
20 evidence of disruption. And you said you wanted to raise that  
21 yourself.

22                  THE COURT: Yes, I did. I've been concerned about that  
23 since this came up yesterday, and I want to give you-all my take  
24 on this right now and let you comment on it and also as to  
25 whether you think I'm off base in thinking this way and what you

1 think that the effect of all this is on the evidence.

2           The question of whether the speech at issue is --  
3 generally speaking, at issue -- the question of whether the  
4 speech at issue impairs -- let me see the language -- impairs  
5 discipline by superiors or among coworkers -- that's one of the  
6 things -- is relevant. And that's in the case of *Jackson versus*  
7 *State of Alabama State Tenure Commission*, 405 F.3d 1276 at 1285,  
8 Eleventh Circuit, 2005. Well, the *Jackson* case involved a  
9 school board. The *Anderson* case that we've talked about at  
10 times in the past -- and that's Eleventh Circuit, 2001, *Anderson*  
11 *versus Burke County, Georgia*, 239 F.3d 1216 over at 1221 -- puts  
12 that in the context -- puts this issue in the context of a  
13 paramilitary organization because that involved the Emergency  
14 Management Agency employees. And in that case, the Eleventh  
15 Circuit clearly held that the -- that a defendant -- that  
16 defendant -- that was a paramilitary organization -- did not  
17 have to wait for disruption or disturbance to occur before  
18 acting.

19           So it seems to me that it's probably not correct to bar  
20 all evidence about disruption or the possibility of disruption.  
21 So it seems to me that since it's a paramilitary organization,  
22 since that's an issue, since an issue in balancing is whether  
23 the telephone call impairs the -- impairs discipline by  
24 superiors or among coworkers, and since it being a paramilitary  
25 organization, just the potential for doing that is sufficient,

1 that evidence as to whether it actually -- the telephone  
2 actually impaired that might be relevant to whether there was a  
3 potential for it. But in addition to that, the evidence can  
4 come in not just in a vacuum of that one telephone call but in  
5 the context that it was -- that it was made after the incident  
6 involving the press and the discussion with this plaintiff and  
7 others about what they could and could not do so that -- that  
8 when they terminated him for going to the -- talking to the  
9 mayor, it was -- it would be relevant to determine whether that  
10 telephone call had a potential for impairing discipline or work  
11 among coworkers in the context of it having come on the heels of  
12 this -- of this other incident. So that's the way I'm looking  
13 at it right now, and I'd like to hear from both sides any  
14 comments.

15 MR. STEELE: Your Honor, I have several comments on  
16 that and perhaps later a question. But where I disagree with  
17 what you said -- like it's in two parts. I think you and I read  
18 the *Anderson* case a bit differently. I happen to have argued  
19 the losing side of that case --

20 THE COURT: Oh, really?

21 MR. STEELE: -- at the Eleventh Circuit before Judge  
22 Edmondson. And my reading of the case is that the Court didn't  
23 explain what it did, what its analysis was in respect to  
24 disruption or potential for disruption. It said very little and  
25 really didn't provide guidance on that. So -- but when you

1 bring it back to this case, we would strongly object to evidence  
2 of any alleged disruption caused by the newspaper article coming  
3 in on the issue of whether the phone call caused disruption.  
4 And I mention at least two reasons for that. One is although  
5 you've mentioned it coming on the heels of, the phone call to  
6 the mayor was actually six months after. It wasn't the next day  
7 or the next week.

8 THE COURT: I understand.

9 MR. STEELE: But the more important reason is this.  
10 The newspaper article was public. It was on the newspaper,  
11 photos of everybody on it. And because of that, it puts it  
12 qualitatively, in the analysis of whether there's disruption, in  
13 a very different factual framework than what Mr. Davis did in  
14 this case.

15 In this case, rather than telephone the mayor about  
16 this incident, if Mr. Davis had in fact called up that newspaper  
17 reporter and, you know, gave him an earful about it and an  
18 article was printed, that -- I could understand what you're  
19 saying in terms of, well, what happened before might be  
20 informative as to what happened now. But Mr. Davis actually  
21 chose a course of action that was unlikely to cause any  
22 difficulty -- and we're not admitting that there was difficulty  
23 before, but he chose a course of action that was really designed  
24 not to cause that difficulty. It was, you know, two people on a  
25 conversation, he and the mayor; and if the mayor hadn't told

1 anybody about it, nobody would have known about it. And during  
2 the short time period between the conversation and the  
3 termination, the information that we have is that it wasn't a  
4 topic of discussion. People generally didn't know about it.  
5 There's nothing at all at the station, and it didn't become a  
6 topic of discussion at the station until he was terminated.  
7 Then everyone was talking about it.

8 It even is different than and I think more respectful  
9 to the chief in terms of some of the arguments they've made that  
10 he did not try to in the first instance go to a public meeting  
11 of the city council and raise this issue before everybody where,  
12 you know, I'm assuming that there's members of the press there  
13 and it would be reported and perhaps even blown out of -- out of  
14 proportion.

15 But to say that evidence which would clearly be  
16 prejudicial relating whether, you know, a big newspaper story  
17 plastered all over the paper caused disruption is informative as  
18 to whether a private telephone conversation caused disruptive --  
19 disruption is something that we disagree with. And any possible  
20 relevancy to that is substantially outweighed by the potential  
21 for prejudice caused by that.

22 THE COURT: Well, that's certainly a good argument. It  
23 could also be argued, however, that going to -- under the --  
24 under the circumstances and the past history, that it had more  
25 potential for disruption to go privately to the mayor of the

1 city and I'll say somewhat in secret than it would have been to  
2 go through the chain of command and speak publicly at a city  
3 council meeting. I don't know which would have been the most  
4 disruptive. And under the *Anderson* case, it seems to me that  
5 they're saying that the decision makers in a paramilitary  
6 organization don't have to wait until something becomes public  
7 and let it fester and cause disruption before taking action but  
8 can take action to head that off. That's the way I view it.

9           But I -- let me hear from --

10           MR. MCKOON: That's -- that's what I believe we argued  
11 the distinction was previously, that you had a paramilitary  
12 organization. It made it different. Because you're not talking  
13 about -- you don't have to show actual disruption; you have to  
14 show potential for disruption. And it's a violation of the same  
15 policy on both occasions, a policy that he clearly knew about.  
16 And so I think we're entitled to show that.

17           MR. STEELE: And we would contend, of course, that  
18 they're not because they're two completely different and  
19 qualitatively different events. And if the Court disagrees with  
20 that -- and our objection is on the record for that -- I would  
21 request that that information, if it's to be presented at all,  
22 is to be presented outside the presence of the jury because you,  
23 Your Honor, as you said yesterday, will be the one deciding this  
24 issue of potential disruption and that that's an issue that  
25 you're going to be deciding. If that's the case, we shouldn't

1 have this -- this prejudicial information presented in front of  
2 the jury.

3 THE COURT: Well, now, in your requested special  
4 interrogatories you've asked for the jury to answer a question  
5 as to whether this was disruptive. And it may be that by the  
6 time all the evidence is in, it is something to submit to the  
7 jury. I haven't crossed that bridge yet. Until all the  
8 evidence is in, I don't know. It may be a fact issue that we'd  
9 want the jury -- that the jury would need to determine or that  
10 the jury might be asked to make an advisory decision on. I just  
11 don't know. So I'm not going to take some evidence and hear it  
12 outside the presence of the jury and other evidence and hear it  
13 in the presence of the jury unless I'm satisfied that there's no  
14 question about whether it will be relevant to the question that  
15 would be asked.

16 MR. STEELE: Well, Your Honor, what I was suggesting on  
17 this issue of disruption is that you hear all of the evidence,  
18 evidence that there was disruption, evidence that there wasn't  
19 disruption, that you hear all of that outside the presence of  
20 the jury. I wasn't asking to pick and choose.

21 THE COURT: Well, I understand, but you've requested an  
22 interrogatory to the jury on the issue.

23 MR. STEELE: We submitted interrogatories on -- on  
24 everything we thought could potentially --

25 THE COURT: You've changed your mind.

1                   MR. STEELE: No, no. We submitted them on everything  
2 we thought could potentially come before the Court. To the  
3 extent there's an adjustment here -- I'll be perfectly frank --  
4 the adjustment is because from our perspective, this stuff  
5 shouldn't have come in anyway. And now -- now we're in a  
6 different situation where information is coming in that we think  
7 shouldn't come in and should have been excluded but apparently  
8 is not going to be excluded. And the Court's, you know,  
9 indicated quite clearly that the Court will be making the  
10 judgment on that. And those two factors together justify  
11 presenting that information, if at all, outside the presence of  
12 the jury. I would suggest that maybe there needs to be a  
13 showing of what disruption, if any, the city contends resulted  
14 from that telephone call in those -- those five days.

15                   THE COURT: What do you say, Mr. McKoon?

16                   MR. MCKOON: Well, I can tell you that one thing that  
17 happened was that the first thing the fire chief did was he  
18 wrote a memorandum to the city manager saying the mayor should  
19 not be interfering in the department or city government because  
20 he said, you know, the charter of our city calls for all these  
21 matters to be handled in the department and then on up from  
22 there. And I can tell you right now the mayor is going to  
23 testify that he didn't like hearing that. But, you know, there  
24 was some friction caused by it just from that standpoint.

25                   The other thing that I expect the chief is going to

1 testify to is that this was the very kind of thing he was trying  
2 to -- this man had only been the permanent chief of the  
3 department since May of 2005. We're now in April of 2006. He's  
4 sitting there trying to get this department in order by -- by  
5 trying to come by and do a systematic enforcement of the rules.  
6 And when somebody goes around those rules, it puts him in a  
7 situation like how is this going to make me look if I let  
8 somebody go around these rules. And that's what he's going to  
9 testify to, I expect. And so that's the -- there was not  
10 only -- I think there's going to be a showing of actual  
11 disruption, but there's going to be a showing of the potential  
12 for more. And that's what we intend to put on.

13 MR. STEELE: If the chief's letter -- inaccurately,  
14 from the mayor's point of view -- expressing his opinion that  
15 the mayor was overstepping his bounds is disruption, then that  
16 is not the fault of David Davis. It's the fault of the chief  
17 putting himself in the position of trying to tell the mayor what  
18 the city charter and rules provide and doesn't provide,  
19 something that the mayor took umbrage at. But that wasn't  
20 anything that David Davis did or that he can be held responsible  
21 for.

22 Secondly, to look at this appropriately, you have to  
23 look at the time period that we're looking at here. And there's  
24 no evidence that anyone other than the chief and the top  
25 management people knew or had any issue with there being this

1 short, brief, cordial phone call to the mayor. There's simply  
2 no evidence of that.

3                   This gets back to the qualitative difference.  
4 Mr. McKoon's description makes it sound more like this was done  
5 in public and broadcast around instead of being something that  
6 you've got a mayor who said I have an open-door policy and  
7 you've got an employee who calls the mayor. And the mayor  
8 didn't have to talk to him, but the mayor had no problem talking  
9 to him, and that was it. Had the mayor not mentioned it to  
10 Mr. Roberts, nobody would have known about it. But the  
11 potential disruption can't be the disruption because management  
12 people didn't like that David Davis disagrees with them on an  
13 issue that's before the city council. Disagreement with the  
14 chief over a city council matter can't be the test, because if  
15 it is, then freedom of speech is only freedom to speak in a  
16 matter that your boss approves and in favor of your boss's  
17 viewpoint, which, of course, is not freedom of speech at all.

18                   THE COURT: Well --

19                   MR. MCKOON: May I respond to that briefly?

20                   THE COURT: Yes.

21                   MR. MCKOON: You know, of course, it is our contention  
22 that the rule, the ASOP, is a reasonable rule. To say that  
23 David Davis did not cause this disruption, to me, is -- is  
24 ludicrous. Had he followed the rule, we wouldn't have been in  
25 this situation, you know. And to say that, well, if you break

1 the rule and nobody knows about it, then it's okay, again, to  
2 me, that's kind of silly.

3 MR. STEELE: Well --

4 MR. MCKOON: To sit here and say that -- and this is  
5 the last thing I'll say about it. To say that it is not as  
6 disruptive because the public didn't know about it, to me, is  
7 not the test. There's a lot of disruption that goes on behind  
8 the scenes in departments that causes problems if people are not  
9 following the rules. And that's our point.

10 THE COURT: All right. Well, I'm going to start this  
11 trial in four minutes. I'm going to allow testimony concerning  
12 actual disruption, potential for disruption from the telephone  
13 conversation. And the potential for disruption and actual  
14 disruption can be put in context of why it was considered to be  
15 potentially disruptive or actually disruptive and not restricted  
16 to just what happened in those few days between the telephone  
17 conversation and the termination.

18 Now, if at an appropriate time, Mr. Steele, you want to  
19 get anything further on the record about that --

20 MR. STEELE: And we will.

21 THE COURT: -- I'll be happy for you to. But that's  
22 the way I'm going to rule. Is there anything else we need to  
23 take up?

24 MR. MCKOON: Judge, I haven't -- have you got anything  
25 else?

1 MR. STEELE: No.

2 MR. MCKOON: Judge, I haven't brought up anything, and  
3 I know you've got a time limitation. But, you know, I got the  
4 transcript of these interviews that we had with Captain Land and  
5 Captain Taylorson and I think it's Sergeant Bill --

6 MR. DUGAN: Pitts.

7 MR. MCKOON: -- Pitts -- I'm sorry -- that was in here  
8 the other day. And, you know, I don't know what they intend to  
9 ask them about -- about me involving all of this. I've gone  
10 back over these transcripts. And it looks like to me the only  
11 thing I could see that they could possibly complain about is  
12 that they claim that I did not tell these people that they did  
13 not have to talk to me.

14 If they want to ask that, I have no problem with that.  
15 But to go any further into that I think is prejudicial and it  
16 has no probative value whatsoever, because everyone that  
17 testified said that they were going to tell the truth. They got  
18 an instruction from the Court that absolutely nothing was going  
19 to happen to them as a result of telling the truth. And in  
20 fact, each one of them acknowledges in here that I told them  
21 that nothing like that was going to happen.

22 THE COURT: I don't know what they plan to ask about  
23 that. Do you want to respond to that?

24 MR. STEELE: My response to that is twofold. First of  
25 all, as we contended yesterday and continue to contend, the fact

1 that people were instructed to report back on our trial  
2 preparation and what we asked them, we think, you know, is a  
3 violation and it's disruptive and inherently reduces Mr. Davis's  
4 ability to have a fair trial. And the Court in its ruling  
5 yesterday decided, as I understood it, that, well, I don't think  
6 it's so severe that I'm going to exclude it, but you're entitled  
7 to bring all of this out so that the jury --

8 THE COURT: That's right.

9 MR. STEELE: -- can just have all the information. The  
10 jury can give it whatever weight it chooses or not to give when  
11 it's considering the testimony of those individuals. And I  
12 think that if it's going to be allowed, I think that --

13 THE COURT: I'll allow that --

14 MR. STEELE: -- we should be able to do that.

15 THE COURT: -- and you can object to any specific  
16 question.

17 MR. MCKOON: Can I just get one other thing on the  
18 record?

19 THE COURT: Okay.

20 MR. MCKOON: When we were in here yesterday, it is my  
21 recollection that Mr. Steele acknowledged that he had asked  
22 these witnesses the same questions in regard to what I had asked  
23 the witnesses.

24 Is that correct?

25 MR. STEELE: Some of them.

1 MR. MCKOON: Okay. Well, which ones did you not?

2 THE COURT: You can ask them about it.

3 MR. MCKOON: Well, I understand that. But I'm just

4 saying to say that that interfered with his trial preparation --

5 THE COURT: Well, we're not --

6 MR. MCKOON: -- I mean he did the same thing I did.

7 THE COURT: We're not going by --

8 MR. STEELE: The distinction --

9 THE COURT: Excuse me.

10 MR. STEELE: Sorry.

11 THE COURT: We're not talking about that. We're just

12 talking about whether he can ask those witness those questions,

13 and I'll allow it. Let's go.

14 MR. MCKOON: All right.

15 (Chambers conference concluded at 2:00 p.m., at which time

16 proceedings reconvened in open court with the jury present,

17 as follows:)

18 (Call to Order of the Court)

19 THE COURT: Well, welcome back. It turned out we

20 didn't have dangerous weather over here after all, but I guess

21 it's better to be safe than sorry. The weather reports were

22 still calling for the potential up until the end of the

23 morning.

24 I do want to make up for a little bit of that time by

25 going this afternoon until around -- not later than six o'clock,

1 but going a little later so that we can move the trial along.

2 Mr. McKoon, were you through with your  
3 cross-examination of Mr. Davis?

4 MR. MCKOON: Judge, I would like to ask another  
5 question, if it's all right.

6 THE COURT: Take the stand. Sir?

7 MR. STEELE: Your Honor, Mr. McKoon rested yesterday at  
8 the end of the examination. It was plain on the record that he  
9 rested, and we indicated that we would be starting with  
10 redirect.

11 THE COURT: I didn't understand that. I'll let him --

12 MR. MCKOON: I thought I asked for permission to recall  
13 him.

14 THE COURT: Yes. I'll let him continue with  
15 cross-examination.

16 Take the stand, please, Mr. Davis. You're still under  
17 oath.

18 THE WITNESS: Okay.

19 DAVID PAUL DAVIS, the witness, having been previously  
20 duly sworn, resumed the stand and testified further as follows:

21 FURTHER CROSS-EXAMINATION

22 BY MR. MCKOON:

23 Q. Mr. Davis, I just have a few more questions for you, and I  
24 won't be very long, I hope. This incident involving Mr. Bennett  
25 where you say that he told you that it was okay that you go to

1 the mayor with your concerns -- do you remember testifying about  
2 that yesterday?

3 A. Yes, sir.

4 Q. And he was your captain; is that correct?

5 A. Yes, sir.

6 Q. When you filed a complaint in this case and an amended  
7 complaint, do you know whether or not there's anything in those  
8 documents about this conversation with Mr. Bennett?

9 MR. STEELE: Objection. Relevancy.

10 THE COURT: Yes. I sustain.

11 Q. Well, let me ask you this. At the time that you were called  
12 in to be discharged -- I guess that's when it happened -- was  
13 Captain Bennett there?

14 A. No, sir.

15 Q. Okay. He was not there?

16 A. No, sir.

17 Q. All right. You're sure about that?

18 A. Yes, sir.

19 Q. Okay. Well, who was there?

20 A. The day I was terminated?

21 Q. Yes, sir.

22 A. It was the personnel director, which is Ms. Barbara Goodwin,  
23 the fire chief, which is Wallace Hunter, and the deputy chief,  
24 which was Roy Waters.

25 Q. Okay. Is that the first time you'd been called in and asked

1 about this?

2 A. I was asked I think on Wednesday to write a statement.

3 Q. Okay. And who was present on that day?

4 A. I'm not real sure. I'd have to check the record.

5 Q. Do you know if Roy Waters was the person who asked you to  
6 write the statement?

7 A. Yes, sir.

8 Q. And he was the deputy chief?

9 A. Yes, sir.

10 Q. And do you know if he called you in to an office and asked  
11 you if in fact you had followed the chain of command?

12 A. I think he asked me first if I called the mayor.

13 Q. Okay. And then the second -- and you said yes?

14 A. Yes, sir.

15 Q. And then the second question was did you follow the chain of  
16 command?

17 A. Yes, sir.

18 Q. And what did you tell him?

19 A. Whatever's on the statement that I wrote.

20 Q. All right. And was Captain Bennett present on that  
21 occasion?

22 A. I don't remember if he was or not.

23 Q. Okay. Well, did you say to Chief Waters, well, you know, I  
24 got permission from Captain Bennett?

25 A. No, sir.

1 Q. Why didn't you?

2 A. I mean I didn't know I was going to be fired. I just was  
3 told to write a statement.

4 Q. Well, did you understand that you were being written up or  
5 that there was some problem with what you had done?

6 A. No, sir.

7 Q. So you were just called in and asked the questions we just  
8 went over and asked to write a statement about it, and then what  
9 happened after that?

10 A. I was told to sit there at station -- firehouse one.

11 Q. What was the next thing that happened in regard to this  
12 incident?

13 A. I was told to go back to my station, and I finished my  
14 shift.

15 Q. And then when were you next contacted about it?

16 A. When I was at home.

17 Q. And is that when you were called back down to the personnel  
18 office?

19 A. I was called at home and told to report to the personnel  
20 office. Yes, sir.

21 Q. And at that time, were you given a reason as to why you were  
22 being called down there?

23 A. Well, they gave me a sheet of paper that listed why I was  
24 being terminated.

25 Q. Okay. And that's this written warning form we've talked

1 about?

2 A. Yes, sir.

3 Q. The one that you signed; is that correct?

4 A. Yes, sir.

5 Q. This one right here. And when you went in there, did they  
6 let you know that when you called the mayor, that you were being  
7 terminated for not following the chain of command?

8 A. I don't remember those words.

9 Q. Okay. You don't remember anything about chain of command.

10 A. Right. I was told to read that document detailed account.

11 Q. Well, you were at the end of your eight-year career, and you  
12 were about to be fired. I guess you were surprised.

13 A. Yes, sir.

14 Q. And if -- did you not know it was because you had failed to  
15 follow the chain of command?

16 A. I thought I was fired for calling the mayor.

17 Q. Okay. So you didn't know it was because you hadn't followed  
18 the chain of command?

19 A. I was told it was because I called the mayor.

20 Q. I understand what you were told. My question was, you did  
21 not know it was because you failed to follow the chain of  
22 command?

23 A. All I did know was it was because I called the mayor.

24 Q. So that's -- that's your best answer to that question?

25 A. Yes, sir.

1 Q. All right. Did you at that time say, well, you know, I got  
2 permission from Captain Bennett to call the mayor?

3 A. No, sir.

4 Q. Well, you had a personnel review board hearing, didn't you?

5 A. Yes, sir.

6 Q. And at the personnel review board hearing, did you at any  
7 time while you were testifying before the personnel review board  
8 say, you know, and by the way, I had permission to call the  
9 mayor from my captain, Captain Bennett?

10 A. No, sir. I did not tell them that.

11 Q. Well, did you think that would be important, since that's  
12 part of your allegation in this case?

13 A. Yes.

14 Q. Why did you leave that out when you talked to the personnel  
15 review board?

16 A. Because he asked me not to.

17 Q. Who asked you not to?

18 A. Captain Bennett.

19 Q. Oh. When did he do that?

20 A. From the time I was terminated till I was waiting for my  
21 panel review board, in between that time period.

22 Q. Okay. So you had conversations with Captain Bennett about  
23 that during that period of time?

24 A. Yes, sir.

25 Q. And where did those conversations take place?

1 A. At his motorcycle shop.

2 Q. And where is that?

3 A. It's in Columbus.

4 Q. Where in Columbus?

5 A. Down the road from the bank that I use.

6 Q. Do you know what street it's on?

7 A. I think it was on 13th Street.

8 Q. 13th Street in Columbus.

9 A. Yes.

10 Q. What's the name of his motorcycle shop?

11 A. C&B Customs.

12 Q. Did you go over there?

13 A. Yes, sir.

14 Q. And what was your purpose in going over there?

15 A. I was driving by from the bank and I saw him. And he waved,

16 and I pulled in the parking lot.

17 Q. Well, tell -- who all was present for this conversation you

18 just told us about?

19 A. Just me and George, Captain Bennett.

20 Q. And what was said?

21 A. He asked me when my panel review board hearing was, and I

22 told him that I'm waiting for them to give me a date.

23 Q. Okay. What else was said?

24 A. And he told me -- asked me if, you know, I was having a

25 legal representative, and I said yes. And he said don't worry

1 about it; you're going to be okay.

2 Q. Okay. Anything else said?

3 A. And then he told me that -- not to say anything about our  
4 conversation on that Sunday, that Wallace would kill him.

5 Q. Is that right?

6 A. Yes, sir.

7 Q. Okay. And, of course, only you and Mr. Bennett were present  
8 when that happened.

9 A. Yes, sir.

10 Q. Did the -- did your captain have the authority to refer you,  
11 let's say, to the fire chief?

12 A. My captain has the authority to do whatever he wants to.

13 He's my captain.

14 Q. What I'm trying to ask -- maybe I'm not doing a good job,  
15 Mr. Davis -- is when you're coming up the chain of command, he's  
16 your -- your captain is your immediate supervisor; is that  
17 correct?

18 A. Yes, sir. He's my boss.

19 Q. And if you take a problem to him and he can't resolve it,  
20 then what's the next course for him?

21 A. For my captain?

22 Q. Yes, sir. Where can he send you?

23 A. To his boss.

24 Q. And who is that?

25 A. His boss would be an assistant chief.

1 Q. Okay. And now it's called a battalion chief, but then an  
2 assistant chief, right?

3 A. I don't know. They were assistant chiefs when I was there.

4 Q. Okay. And so if it went to the assistant chief and you went  
5 up to the assistant chief, what would the assistant chief have  
6 the authority to do?

7 A. Are you talking about a grievance policy or --

8 Q. Any -- any complaint, grievance, whatever you want to call  
9 it. If you wanted to go up the chain of command with a problem,  
10 what would be the next person up the chain of command from the  
11 assistant chief?

12 A. After the assistant chief would be a deputy chief.

13 Q. And who after that?

14 A. That would be the fire chief.

15 Q. And who after that?

16 A. The city manager.

17 Q. Okay. And that's the chain of command, isn't it?

18 A. As far as, what, if I have a problem?

19 Q. As far as the chain of command if you have a problem, yes.

20 A. In the fire department, yes.

21 Q. Okay. Well, that's the department you were in; is that  
22 right?

23 A. When I'm on duty, yes.

24 Q. Okay. So if Captain Bennett told you you could go to the  
25 mayor, he wouldn't have the authority to do that, would he?

1 A. Yes, he could.

2 Q. Oh, he could?

3 A. Yes, sir.

4 Q. That's your understanding of the chain of command?

5 A. No. But that's what the captain told me. And the  
6 captain -- if he says that, he's my immediate supervisor. And  
7 if I'm satisfied with his answer, then I don't have to go any  
8 further.

9 Q. All right. So it's your testimony here under oath today  
10 that Captain Bennett sent you directly to the mayor.

11 A. The captain told me to call the mayor.

12 Q. Okay. Now, in addition to that, is it also your testimony  
13 here today that you were fired because you were a union  
14 president?

15 MR. STEELE: Objection, Your Honor.

16 THE COURT: Yes.

17 MR. STEELE: Relevance.

18 THE COURT: That's not an issue in the case. I  
19 sustain.

20 MR. MCKOON: Okay.

21 Q. Well, it is your -- well, let me ask you this, because  
22 there's some confusion about this, I guess. When you were going  
23 to the mayor with this probationary policy, if it didn't affect  
24 you and you were just going as a -- like you said, as a private  
25 citizen, is that -- is that what you're saying happened in this

1 case, that the policy did not affect you?

2 A. That's correct.

3 Q. All right. If the policy had affected you, then would you  
4 have followed the chain of command?

5 A. If I'm on duty and I felt like I had to file a grievance, I  
6 would use the chain of command.

7 Q. So the bottom line on the answer to every question is, in  
8 your mind, you don't have to follow any standard operating  
9 procedure or any rule of your fire department if you are off  
10 duty.

11 MR. STEELE: Objection, Your Honor. Not only is that  
12 an inaccurate recitation of the witness's testimony, it's also  
13 posing a hypothetical that the witness should not have to  
14 respond to.

15 THE COURT: Well, I sustain as to the breadth of the  
16 question. I'll let him go into this as to what he's contending.

17 MR. MCKOON: I'm going to ask it differently, then.

18 Q. Is it your position that anytime you're not on duty as a  
19 fireman, that you do not have to follow the standard operating  
20 procedures of the fire department?

21 MR. STEELE: Objection. Hypothetical.

22 THE COURT: Overruled.

23 A. Could you repeat the question?

24 Q. Yes, sir. Is it your position that when you're not on duty  
25 as a fireman, that you do not have to follow the standard

1 operating procedures of the Phenix City Fire Department back  
2 when you worked for them?

3 MR. STEELE: Objection. Relevancy.

4 THE COURT: Overruled.

5 A. When I worked for the fire department, I would follow the  
6 rules and regulations that I'm required to while I'm on duty.

7 Q. So is it your position that you don't have to do that when  
8 you're off duty?

9 A. If it infringes on my rights as a citizen, then I would  
10 think that the Constitution would be predominantly more  
11 important than an SOP for the fire department when I'm off  
12 duty. I'm a citizen, not a firefighter.

13 Q. And yesterday I believe you said you were just going to the  
14 mayor like you would about any other ordinance with the city; is  
15 that correct?

16 I'm sorry. I lost my train of thought. Yesterday you  
17 testified that you were just going to the mayor like you would  
18 for any kind of ordinance that came before the city council.  
19 But this wasn't just any kind of ordinance, was it? I mean it  
20 wasn't the same as a zoning ordinance, for instance, that  
21 affected all the citizens of Phenix City.

22 A. Oh, it absolutely --

23 MR. STEELE: Objection. Relevancy.

24 THE COURT: Overruled.

25 A. It did affect all the citizens of Phenix City.

1 Q. Okay. Well, wasn't it -- wasn't it concerning the fire  
2 department and the police department and the building inspection  
3 department?

4 A. No, sir. It was a matter of public concern.

5 Q. The ordinance itself, though, had to do with the  
6 probationary period for people that would be newly hired in the  
7 fire department, the police department, and the building  
8 inspection department; isn't that correct?

9 A. Yes. That's what -- the agencies, the public safety  
10 agencies, is what it --

11 Q. So it pertained to your organization that you were a part  
12 of; is that right?

13 A. Yes. I was a part of the public safety.

14 Q. So like I said, in that -- in that sense, it's not just an  
15 ordinance that affects parks and recreation, for instance, or  
16 zoning or something like that. It affected your department; is  
17 that right?

18 A. It affected public safety.

19 Q. All right. Which was your department.

20 A. I was in the fire department, which is under public safety.

21 Q. And under the rule, just to be clear, if it has to do with  
22 the fire department, the work-related business of the fire  
23 department -- was this work-related business of the fire  
24 department?

25 A. No, sir.

1 Q. It was not?

2 A. No, sir.

3 Q. Wasn't related in any way to the work of the fire  
4 department?

5 A. No, sir. It was proposed legislation. It wasn't even  
6 enacted.

7 Q. All right. Well, then I guess we just won't agree on that.  
8 Let's go back to one other thing about that. You understand  
9 that as a citizen, even though you don't live in the city of  
10 Phenix City, but if you did live in the city of Phenix City,  
11 then if you had a problem with your garbage pickup or you had a  
12 problem with a pothole in front of your house or with the way  
13 traffic was being directed in front of your office or if -- like  
14 the way the street is tore up in front of my office right now,  
15 any --

16 MR. STEELE: Objection, Your Honor. Relevancy.

17 MR. MCKOON: Can I --

18 THE COURT: I haven't heard the question yet.

19 Overruled.

20 MR. MCKOON: Thank you, Your Honor. I'd like to finish  
21 it.

22 Q. -- that you could call up any elected representative you  
23 wanted to about any of that sort of business?

24 MR. STEELE: Objection, Your Honor. Relevancy.

25 THE COURT: Well, I'll overrule to the extent that the

1 question is asking about a policy of the city and whether it  
2 would restrict him from doing things that didn't have anything  
3 to do with work. You can answer it.

4 Q. I guess that's my question. My question is --

5 A. Okay.

6 Q. -- if it didn't have anything to do with the fire  
7 department, you understood you could call anybody you wanted to  
8 about it. Is that not correct?

9 A. Are you asking me as a citizen, do I have the right to  
10 contact elected officials?

11 Q. About anything other than fire department business. I'm  
12 going -- let's take the fire department business out of it right  
13 now.

14 A. Yes. I have that right as a citizen.

15 Q. Okay. And you understood you could do that anytime you  
16 wanted to.

17 A. Correct.

18 Q. All right. And you could call the mayor or the city  
19 councilman, the city manager, any department head, anybody about  
20 something that's not fire-department-related without any  
21 consequence whatsoever or without having to go through any sort  
22 of procedure to do it; is that correct?

23 A. No, sir. I don't think that would be correct.

24 Q. Okay. Well, correct me.

25 A. Well, if I was on duty, you know, I don't think I would be

1 making phone calls to anybody I wanted to.

2 Q. I'm just talking about as a private citizen, sir.

3 A. Oh, yes. As a private citizen, I feel like I have rights.

4 Q. And the only thing this policy requires is that if you're  
5 handling work-related business of the fire department or a  
6 proposal of the fire department, is that you'd have to go  
7 through these steps. Do you agree with that?

8 MR. STEELE: Objection, Your Honor. There's not a word  
9 in that document about a proposal of the fire department. It's  
10 misrepresentation of the document.

11 THE COURT: Overruled.

12 Q. Do you understand what I'm saying, Mr. Davis?

13 A. If there was something that was work-related and in place as  
14 part of the rules and regulations, then yes, I would follow that  
15 SOP.

16 Q. Okay. If it had to do with the fire department.

17 A. Already had to do with the fire department.

18 Q. Exactly. And that by following this SOP, if you couldn't  
19 get satisfaction in the chain of command, that eventually you  
20 could get to the city -- the city manager would arrange a  
21 hearing with the city council; is that correct?

22 A. In theory.

23 Q. In theory. Okay.

24 A. Yes.

25 Q. So all this policy requires you to do, basically, is to take

1 a problem that you have up the chain of command before taking it  
2 to city council; isn't that right?

3 A. Not necessarily.

4 MR. MCKOON: Okay. I don't have anything further.

5 THE COURT: Mr. Steele, cross-examine?

6 MR. STEELE: Just briefly, Your Honor.

7 REDIRECT EXAMINATION

8 BY MR. STEELE:

9 Q. Mr. Davis, yesterday on cross-examination you were  
10 questioned regarding when you received phone calls notifying you  
11 about a newspaper article concerning the proposed ordinance.  
12 Would you please tell the jury when you learned of the proposed  
13 ordinance, where you were, and how you learned.

14 A. When I first learned of the proposal to lengthen the  
15 probationary time, I was on duty. I don't know the date, but it  
16 was a Sunday. I received a phone call from Bill Pitts, who told  
17 me to look in the paper. I looked in the paper and saw that  
18 there was a proposal to change a part of the merit system.

19 Q. Now, Mr. Davis, could you explain to the jury, if you  
20 recall, what you meant during your review board hearing when you  
21 mentioned calls coming into the house?

22 A. The "house" phrase could mean firehouse or house, home. I  
23 don't remember exactly. That was two years ago. But I am  
24 absolutely positive that when I found out about the probation  
25 time, I was on duty at the firehouse and received a call from

1 Bill Pitts to look into the paper, the Sunday paper.

2 Q. And Mr. Davis, you were also questioned on cross-examination  
3 on this idea that your -- because you work 24-hour shifts, that  
4 you're sleeping on the job during part of that period. Would  
5 you explain to the jury how frequently you were able to obtain  
6 even six hours of uninterrupted sleep or four hours of  
7 uninterrupted sleep while you were employed by the Phenix City  
8 Fire Department?

9 A. All I can say is more times than not, your sleep is  
10 interrupted. I don't recall many, many nights that you go to  
11 bed and sleep all night. That doesn't happen. That's why they  
12 give you time off, because you're wore out after you work. I  
13 mean maybe a long time ago you used to be able to sleep through  
14 the night; but since I've been in the fire service, that's not a  
15 reality because we run emergency medical calls. Fires don't  
16 come as often as they used to, but EMS calls are like 80  
17 percent. And people call 911 because they're sick a lot during  
18 the nighttime.

19 Q. And Mr. Davis, during your 24-hour shift, are you -- is it  
20 permissible for you to go home to sleep?

21 A. No, sir.

22 Q. You're required to remain at the station?

23 A. Yes, sir. You can't leave.

24 Q. Mr. Davis, would you explain to the jury a couple of  
25 examples of the type of calls that you received in the middle of

1 the night that prevented you from sleeping?

2 A. Well, I've been on calls to where people's houses were on  
3 fire. You pull up in the yard and, you know, they're screaming  
4 save my house, save my house. You go in; it's hot. You risk  
5 your life because people are counting on you. Your ears -- you  
6 get so hot in there that your ears melt into your protective  
7 gear; when you pull it off, pieces of your ear come off. You  
8 can't sleep the rest of the night because your ears are  
9 blistered and swole up like cantaloupes.

10 You go on calls and people have been driving, and they roll  
11 their cars over and the whole family's, you know, out on the  
12 ground. And one person that may be still conscious with broke  
13 legs is saying, you know, save my babies, save my babies. That  
14 kind of stuff happens any shift you can go to work. You never  
15 know. And then, you know, you're expected to just be able to go  
16 back to sleep after that. It doesn't matter how long you're in  
17 the business. I mean you're a human being; you can't just see  
18 that stuff and go back and turn it off.

19 Q. Mr. Davis, when you're on duty, are you required to respond  
20 to calls like that even if they come during the middle of the  
21 night?

22 A. Even if you're using the bathroom, you have to stop what  
23 you're doing and go on a call.

24 MR. STEELE: Thank you. Nothing further.

25 THE COURT: Any recross on matters raised in redirect?

1 MR. MCKOON: No, sir, Your Honor.

2 THE COURT: All right. You can come down.

3 THE WITNESS: Thank you, sir.

4 THE COURT: Call your next witness.

5 MR. STEELE: The plaintiff calls Mayor Hardin as an  
6 adverse witness, sir.

7 THE CLERK: Would you raise your right hand, please.

8 (The witness is sworn)

9 THE CLERK: Be seated.

10 MR. STEELE: If I may.

11 THE COURT: Sure.

12 **JEFFREY SCOTT HARDIN**, the witness, having been duly  
13 sworn, testified, as follows:

14 DIRECT EXAMINATION

15 BY MR. STEELE:

16 Q. Sir, will you please state your name for the record.

17 A. Jeffrey Scott Hardin is full name.

18 Q. And Mr. Hardin, are you presently the mayor of the City of  
19 Phenix City?

20 A. Yes.

21 Q. And how long have you been the mayor of Phenix City?

22 A. Approximately three and a half years.

23 Q. And what is your profession other than mayor, or is that  
24 your full-time?

25 A. No, sir. That's a part-time position. I also have some

1 real estate investments and own a business here in Opelika.

2 Q. Okay. Now, in Phenix City, am I correct that the form of  
3 government is known as a city council slash city manager form of  
4 government?

5 A. Correct. Council/manager form. Correct.

6 Q. Okay. And under that form of government, as I understand  
7 it -- and correct me if I'm wrong -- the mayor of the city  
8 chairs the city council meetings, correct?

9 A. Correct.

10 Q. Has certain ceremonial obligations or functions to perform;  
11 is that correct?

12 A. Correct.

13 Q. Other than that, in every other respect, the mayor of the  
14 city functions as a fully functioning member of the city  
15 council; is that correct?

16 A. Yes, sir.

17 Q. In fact, there are, what, five members on the city council?

18 A. Including myself, five.

19 Q. Including yourself?

20 A. Yes, sir.

21 Q. Three of which cover specific districts, and then two kind  
22 of at-large members that are elected from the city as a whole?

23 A. Correct.

24 Q. And the mayor is elected from the city as a whole?

25 A. Yes, sir.

1 Q. Your vote on the council, you get one vote just like any  
2 other council member?

3 A. Correct.

4 Q. And your vote counts the same as any other council member?

5 A. Yes, sir.

6 Q. What year was it, again, that you ran for mayor?

7 A. It would be 2004.

8 Q. And is that the first time you ran for mayor?

9 A. Yes, sir.

10 Q. If you would, briefly tell us your prior experience on the  
11 city council.

12 A. I had --

13 Q. Is this your first time on the council?

14 A. No, sir. I had served -- I ran in 1998 and served a term,  
15 which at that time, the terms were three years. I served until  
16 2001 as the council member at large and also was the mayor pro  
17 tem at that time.

18 Q. Okay.

19 A. And that was my prior experience. And the next term I did  
20 not run and then ran for mayor.

21 Q. Okay. Now, when you ran for mayor of Phenix City, you  
22 welcomed the support of various groups or organizations within  
23 the city who sought to assist you in your efforts of being  
24 elected, correct?

25 A. Yes, sir.

1 Q. And it's also correct that one of the groups or  
2 organizations that offered support to your candidacy was the  
3 local firefighters association?

4 A. Yes, sir.

5 Q. In fact, sir, it's true that that association made a  
6 donation to your campaign?

7 A. Yes, sir.

8 Q. And also took other steps to support the campaign, such as  
9 putting up yard signs and the like?

10 A. Yes, sir.

11 Q. Now, through that effort or through any other effort, at  
12 some point in time you became aware of who Mr. Davis is,  
13 correct?

14 A. Yes, sir.

15 Q. And you knew he was a firefighter or a sergeant employed by  
16 the fire department?

17 A. I didn't know him specifically, but I knew that he was  
18 employed as a fireman, correct.

19 Q. Okay.

20 A. Excuse me.

21 Q. You didn't know his rank, but you knew he was a firefighter  
22 for the city; is that correct?

23 A. Yes, sir.

24 Q. And at some point in time, you became aware that he had a  
25 leadership role in the firefighters organization?

1 A. I don't know if I ever did before I was elected, because I  
2 think there were some changing of positions about that time. So  
3 it was around the election or right after that I knew he was --  
4 had a leadership role. Yes, sir.

5 Q. Okay. So at some point, you learned; you're just not sure  
6 exactly when?

7 A. Correct.

8 Q. Now, did you attend any meetings or functions that the  
9 firefighters association held?

10 A. I did. I was invited -- if I'm correct on the attendance, I  
11 was invited once as a candidate along with other candidates.  
12 And then once after I was elected, I was invited to a function  
13 that was more of a celebration to celebrate a retirement of a  
14 firefighter, which I think -- assume was a member of the  
15 association. But he and I had also went to high school  
16 together. So I think total, I went to two different functions  
17 that were put on by the association, one as a candidate and then  
18 one as -- as an elected person.

19 Q. Okay. So you went to one before you were elected and one  
20 after you were elected.

21 A. To the best of my memory, that is correct.

22 Q. Do you know whether or not Mr. Davis was present at those  
23 occasions when you appeared at the firefighters function?

24 A. I think he was. Yes, sir.

25 Q. Now, sir, I believe that you testified previously in your

1 deposition that at some point in time there was an issue in the  
2 department concerning the subject of swap time. Are you  
3 familiar with that?

4 A. Yes, sir.

5 Q. And that certain firefighters spoke to you concerning that  
6 issue?

7 A. I had run into -- if I'm not mistaken, I had run into a  
8 firefighter at McDonald's about that, and something was  
9 mentioned about swap time. Yes, sir.

10 Q. And that was after you were already mayor?

11 A. Yes, sir. I think so. Yes, sir.

12 Q. Did you tell anyone within the fire department or the city  
13 manager's office that you had that conversation?

14 A. I did not.

15 Q. What, if anything, did you do with the information that you  
16 received from -- from that firefighter?

17 A. I didn't do anything with it. Those decisions are typically  
18 internal decisions that are made by the city manager.

19 Q. So you listened to the firefighter, but it didn't go further  
20 than that?

21 A. Correct.

22 Q. Now, has anyone told you that you did anything wrong by  
23 listening to that firefighter?

24 A. Through this process, I have -- my assumption has always  
25 been that, you know, when someone comes to you, that they have

1 typically followed what is being known as a chain of command.  
2 So as -- through this process, you know, typically, I've learned  
3 not to assume that, that you ask the question when someone  
4 approaches you about their job, have you followed the chain of  
5 command prior to coming to the city council or -- members or the  
6 mayor.

7 Q. Well, isn't it true, Mr. Mayor, that you told the  
8 firefighters on at least one, maybe more occasions, that you, as  
9 mayor, would have an open-door policy? Isn't that correct?

10 A. I tell pretty much everyone that I come in contact with that  
11 I have an open-door policy, yes.

12 Q. When you told the firefighters that you had an open-door  
13 policy, you did not say one word about the chain of command, did  
14 you?

15 A. No.

16 Q. In fact, when you were deposed in this case and were asked  
17 about your open-door policy, you talked about how important it  
18 was for you in the functioning of your role as mayor to hear the  
19 views of members of the citizenry so that you could take those  
20 into consideration; is that correct?

21 A. It's very important. Yes, sir.

22 Q. And as I understood your testimony, you did not believe that  
23 there was anything wrong with you listening to that information,  
24 that the issue became what, if anything, you do with the  
25 information afterwards. Is that fair?

1 A. Correct.

2 Q. Do you know, was there any investigation of the firefighter  
3 that spoke with you about swap time?

4 A. I wouldn't think so. I wouldn't know that, but I wouldn't  
5 think so.

6 Q. Not to your knowledge?

7 A. Not to my knowledge at this point.

8 Q. To your knowledge, there was no discipline of that  
9 firefighter because he spoke to you?

10 A. No, sir. I wouldn't know that.

11 Q. When you spoke to that firefighter about swap time, did you  
12 indicate to him or her in any way that, listen, I can't talk to  
13 you about that?

14 A. I did not.

15 Q. You simply listened to the concern because you're the mayor  
16 of the city.

17 A. Right.

18 Q. Now, as mayor and a member of the council, it's the role of  
19 the council, if I understand properly, to act as the legislative  
20 body for the city. Is that fair?

21 A. Basically, a board of directors would be a good description  
22 or a legislative body, I would -- depending on, you know, how  
23 your thinking on each one of those would be.

24 Q. Well, Mr. Mayor, the City of Phenix City has certain  
25 ordinances, correct?

1 A. Yes, sir.

2 Q. Essentially laws that govern the city and how it operates,  
3 correct?

4 A. Correct.

5 Q. And am I also correct that it's the role of the city council  
6 to consider and approve or disapprove ordinances or proposed  
7 legislation?

8 A. Correct. Yes, sir.

9 Q. That responsibility rests with the council.

10 A. Yes, sir.

11 Q. Now, if you have a proposed ordinance before you at the  
12 council, you'd agree with me, wouldn't you, that it's important  
13 before you vote on it to gather information and learn the pros  
14 and cons and the details of the ordinance?

15 A. We try to do our due diligence on every ordinance. Yes,  
16 sir.

17 Q. Because otherwise, you may not know what you're voting on,  
18 correct?

19 A. Well, I would hope that everyone sitting around the table  
20 knows what they're voting on prior to casting their vote.

21 Q. And that's important that they know what they're voting on.

22 A. Yes, sir.

23 Q. And one of the ways you learn what you're voting on is you  
24 talk to people, correct?

25 A. One of the things -- I mean, obviously, when an ordinance is

1 presented, you typically want to know, one, if a council member  
2 has recommended this ordinance or who recommended this  
3 ordinance. So -- and then at that point, you question that  
4 person as to why do you think this is important. And --

5 Q. Now, Mr. Mayor, it's not your testimony, is it, that when  
6 voting on a proposed ordinance, it's your policy only to speak  
7 to the individual that proposed the ordinance?

8 A. No.

9 Q. You're willing to -- to listen to people who may oppose the  
10 ordinance.

11 A. Sure.

12 Q. You might not act on that. You might not agree with them,  
13 but you're willing to listen to that information, correct?

14 A. You listen to all views. Yes, sir.

15 Q. And you take that into consideration in making your  
16 determination as a member of the council whether to vote yes or  
17 no on an ordinance.

18 A. Yes, sir.

19 Q. Now, there's been a lot of testimony in this case. And I  
20 know, sir, that you're aware of an issue in this case that there  
21 was an ordinance that came before the city council with respect  
22 to probationary -- the length of the probationary period for  
23 public safety employees, correct?

24 A. Correct.

25 Q. And I'm going to give you a binder of exhibits to have in

1 front of you just so you can confirm we're talking about the  
2 same ordinance.

3 A. Okay.

4 (Brief pause)

5 MR. STEELE: Permission to approach, Your Honor?

6 THE COURT: Yes, you may.

7 Q. Here, Mr. Mayor. And if you would, sir, please turn for me  
8 to Exhibit #17 in that binder. Now, sir, is that the proposed  
9 ordinance with respect to extension of the probationary period  
10 for public safety employees that came before the city council in  
11 April of 2006?

12 A. It is.

13 Q. And if I'm reading this correctly, Mr. Mayor, you were one  
14 of the individuals that voted in favor of the ordinance?

15 A. Yes, sir.

16 Q. And that was done on the 18th day of April, 2006?

17 A. Correct.

18 Q. Now, is your normal meeting day Tuesdays?

19 A. The first and third Tuesdays of the month.

20 Q. First and third Tuesdays? To the best of your recollection,  
21 in fact, this proposed ordinance was voted on in the normal  
22 course of business during a Tuesday meeting, correct?

23 A. Yes, sir.

24 Q. What time do your Tuesday meetings -- what time of day do  
25 you hold them?

1 A. Nine o'clock Eastern.

2 Q. Nine o'clock Eastern. And is there a typical length that  
3 they last, or does it all depend on what's before you?

4 A. It just depends.

5 Q. Do you recall on the 18th of April, 2006, how long your  
6 meeting was that day?

7 A. No, sir.

8 Q. But to the best of your recollection, it was a regularly  
9 scheduled council meeting that would have begun at nine o'clock  
10 in the morning on that date?

11 A. Correct. Yes, sir.

12 Q. Now, the ordinance that's before you and was a proposed  
13 ordinance until you-all voted on it --

14 A. Yes, sir.

15 Q. -- that was an issue that you believed was within the scope  
16 and authority of the city council to determine; is that correct?

17 A. Correct.

18 Q. It was within the power and authority of the city council  
19 either to approve the ordinance if the council thought they  
20 should do that or to disapprove the ordinance if the council or  
21 a majority of the council felt that was the right thing,  
22 correct?

23 A. Correct. Yes, sir.

24 Q. That was a policy decision that -- in the form of government  
25 that Phenix City has, it's the type of policy decision, the type

1 of legislative decision, that rests on your shoulders and the  
2 shoulders of the other members of the council.

3 A. Yes, sir.

4 Q. The city manager doesn't vote on proposed ordinances before  
5 the council, correct?

6 A. No, sir.

7 Q. Nor does the fire chief or the police chief?

8 A. No, sir.

9 Q. It's only the five members of the council?

10 A. Yes, sir.

11 Q. Now, you already testified that it's important for you to  
12 gather information to have information concerning the issues and  
13 ordinances that come before the council, correct?

14 A. Yes, sir.

15 Q. And does that include the proposed ordinance that actually  
16 became the law of the city when passed by the council on April  
17 18th of 2006?

18 A. Yes, sir.

19 Q. Do you think it helps you make a better decision if you hear  
20 what people think and have to say about a proposed ordinance  
21 that's before you?

22 A. To a certain extent, yes, sir.

23 Q. Now, I'm not suggesting you agree with everything somebody  
24 tells you, but to gather information and hear differing  
25 viewpoints so that you can make your own determination on

1 whether to vote for or against a proposal?

2 A. Yes, sir.

3 Q. And that would include or be true for this proposal here  
4 that became law when the city council passed it.

5 A. Yes, sir.

6 Q. And I'd like to turn your attention to a much-discussed  
7 telephone call or conversation you had with Mr. Davis concerning  
8 the proposed ordinance. Do you recall that conversation?

9 A. Yes, sir.

10 Q. And in fact, you had that conversation with Mr. Davis on  
11 April the 17th of 2006; is that correct?

12 A. I don't know the exact date, but somewhere around that  
13 time. Yes, sir.

14 Q. If I told you that the correct date is April 17th, 2006, do  
15 you have any reason to believe it's not?

16 A. I have no -- and I know there's a copy of the message that  
17 was taken, so the date would be on there. So that would be the  
18 date of the conversation. But I know it was approximately  
19 around this time period. Yes, sir.

20 Q. Okay. If you would, then, please turn to Exhibit #18 in the  
21 binder in front of you. Mr. Mayor, is what appears in Exhibit  
22 #18 a copy of the phone message that you just referred to?

23 A. It is. Yes, sir.

24 MR. STEELE: Your Honor, I'd move for admission of  
25 Plaintiff's Exhibit #18.

1                   THE COURT: It's admitted.

2 Q. Now, have you had a moment to take a look at it since you  
3 opened up your binder to that page?

4 A. Yes, sir.

5 Q. Probably didn't take you very long.

6 A. No, sir.

7 Q. Does that refresh your recollection as to the date that  
8 Mr. Davis contacted you regarding the ordinance?

9 A. Yes, it does. Yes, sir.

10 Q. And what was that date?

11 A. April the 17th.

12 Q. Okay. When Mr. Davis called, you weren't in; is that  
13 correct?

14 A. I was not available to take the phone call. I don't know if  
15 I was in a meeting, but --

16 Q. You weren't available --

17 A. Right.

18 Q. -- at any rate. Okay.

19 A. Correct.

20 Q. Can you tell by the signature on here who it was that took  
21 the message?

22 A. It's my administrative assistant. Camara is her name.

23 Q. Okay. Part of your administrative assistant's  
24 responsibilities when people call for you and you're not  
25 available is to take a message and let you know?

1 A. Yes, sir.

2 Q. Now, there's reference in here where your administrative  
3 assistant wrote down words that -- it looks like it reads "would  
4 not speak to anyone else" or words to that effect. You may --

5 A. Yes.

6 Q. -- have better luck reading her handwriting than I do.

7 A. Looks like it.

8 Q. But that's essentially what's there, correct?

9 A. Yes, sir.

10 Q. Did you ever talk to her about that language she put down on  
11 the message?

12 A. I don't recall if I did. I sometimes get messages that say  
13 this on there, that they don't want to speak to anyone else.

14 Q. Do you think it's at all odd that someone calls your office  
15 because they want to discuss something with you and your  
16 assistant says, well, the mayor's not available right now, would  
17 you like to speak with someone else, and the person says, no,  
18 I'm calling for the mayor, and so a message is taken and given  
19 to you? Is that an odd occurrence?

20 A. Regular occurrence.

21 Q. Regular occurrence. And so when you received the message of  
22 Exhibit #18, it didn't seem peculiar to you that that language  
23 was written on it.

24 A. No, sir.

25 Q. Now, what did you do with the message after you received

1 it? Did you respond to the call? Did you not respond to the  
2 call?

3 A. I returned the phone call.

4 Q. Okay. And when did you do that?

5 A. I'm not real sure. It was that day, but I'm not real sure  
6 about the time. I typically try to return all my phone calls.

7 Q. Okay. But you do recall that it would have been April  
8 17th. Sometime that day, you returned the call.

9 A. Yes, sir. Based on the time that I got the message -- it  
10 looks like it's twelve-something -- I would have returned that  
11 phone call that day.

12 Q. Okay. And based upon the time that's on that message, I  
13 guess we can safely say that you returned the call sometime in  
14 the afternoon or evening of April 17th?

15 A. Yes, sir.

16 Q. Where were you when you returned that phone call?

17 A. I was in my office.

18 Q. And where is that?

19 A. It's on -- it's at city hall, which is --

20 Q. At city hall?

21 A. -- the utility building on the third floor.

22 Q. Okay. Was anyone else present when you returned that phone  
23 call?

24 A. No, sir.

25 Q. Did anyone force you to return that phone call?

1 A. No, sir. It's a policy that I have.

2 Q. It's your personal policy?

3 A. Yes, sir.

4 Q. Do you think that's a good policy?

5 A. It helps to get elected. Yes, sir. Yes, sir.

6 Q. I imagine that it would.

7 A. And I don't mean to joke, I mean; but no, that's my personal  
8 policy, even outside of politics.

9 Q. I won't disagree with you on that. So you freely and  
10 voluntarily returned the call because that's your personal  
11 policy.

12 A. Yes, sir.

13 Q. You weren't obligated to return it except that you feel it's  
14 the right thing to do.

15 A. Correct.

16 Q. And was anyone else present when you returned that call?

17 A. No, sir.

18 Q. Do you recall how long your conversation -- well, let me --  
19 let me back up a little bit. You placed the call, and you were  
20 able to reach Mr. Davis, correct?

21 A. Correct.

22 Q. And you had a conversation with him on that occasion.

23 A. I did. Yes, sir.

24 Q. Do you recall approximately how long that telephone  
25 conversation was?

1 A. I don't remember the exact time, but I don't think it was a  
2 very long conversation.

3 Q. Could it have been five minutes or less?

4 A. Probably. Yes, sir.

5 Q. Somewhere in that range?

6 A. Yes, sir.

7 Q. Now, when you returned Mr. Davis's call, prior to talking  
8 about the ordinance, did the two of you exchange pleasantries,  
9 greetings?

10 A. I'm sure. Yeah, I would think.

11 Q. And did you also, in exchanging pleasantries, say to  
12 Mr. Davis, you know, hey, Mr. Davis, or perhaps you call him by  
13 his first name, but how are things going?

14 A. I don't really know exactly what I said, but I'm sure it  
15 would be, you know, I'm returning your previous phone call or  
16 something to that extent.

17 Q. Okay. You're not sure if you asked him how things are going  
18 or not?

19 A. I'm not sure.

20 Q. Is that something that you might ask?

21 A. Or I may have said how are you doing.

22 Q. How are you doing?

23 A. Yeah. Sure.

24 Q. How are things going? Something like that.

25 A. Yeah. Or what's the good news is kind of a statement I ask

1 a lot.

2 Q. Okay. That's an interesting one. I'll keep that one in  
3 mind.

4 A. I get to hear a lot of bad, so I always ask for the good  
5 first.

6 Q. Okay. Now, this conversation with Mr. Davis, it was a  
7 cordial conversation?

8 A. Yes.

9 Q. Mr. Davis was not rude or disrespectful to you?

10 A. I don't remember him being rude at all. No, sir.

11 Q. So your recollection is that it was a perfectly normal,  
12 polite exchange between and you Mr. Davis?

13 A. Yes, sir.

14 Q. And as part of that conversation Mr. Davis discussed with  
15 you some concerns about the proposed ordinance; is that correct?

16 A. He -- from what I remember, he didn't understand the  
17 ordinance and what -- what the meaning -- what the ordinance  
18 said and how it applied to the new hires and the existing  
19 employees.

20 Q. Okay. So you had a discussion about what you viewed the  
21 ordinance as applying to or not applying to?

22 A. Correct. There was a question as to the -- the time frame  
23 and how it applied to new employees and how it applied to  
24 promotions and so forth.

25 Q. Now, in fact, as part of this conversation Mr. Davis offered

1 some suggestions or proposed changes to the proposed ordinance;  
2 is that correct?

3 A. He did.

4 Q. And you listened to him, correct?

5 A. I did.

6 Q. At the end of the conversation with Mr. Davis, the  
7 conclusion, did you thank him for calling?

8 A. I don't remember. I may have.

9 Q. That wouldn't be unusual for you to thank somebody for  
10 calling who calls you up to discuss something.

11 A. No.

12 Q. And you also actually told Mr. Davis that you'd take what he  
13 said under consideration, correct?

14 A. You know, what I remember of the conversation, it was more  
15 he asked about it and then, you know, what it meant, as far  
16 as --

17 Q. Right.

18 A. -- and then made the recommendation.

19 Q. I understand that. And you've explained that. The  
20 question, though, before you --

21 MR. MCKOON: Excuse me. May I just object for this  
22 witness?

23 Will you just let him finish his answer?

24 THE COURT: Do you have anything else to say on that?

25 A. Basically, the conversation that I remember was questions on

1 the length of the contract, who it applied to, and then a  
2 recommendation or wouldn't it be better to do it this way. And  
3 that was what I remember of the conversation.

4 Q. Okay. And my question to you was actually quite different.  
5 I didn't ask you to explain the conversation.

6 A. Okay.

7 Q. My question to you was at the end of the conversation, did  
8 you tell Mr. Davis that you would take what he had to say under  
9 consideration?

10 A. I -- I don't remember that. No, sir.

11 Q. You don't remember one way or the other.

12 A. Don't remember either.

13 Q. It was some time ago. You -- did you keep any notes or  
14 records or recordings of this conversation?

15 A. No, sir.

16 Q. So you don't have anything to go on but your memory --

17 A. Correct.

18 Q. -- with respect to that call? Now, at any time during this  
19 conversation, did you say words to the effect of, hey, wait a  
20 minute, Mr. Davis, you're talking to the wrong person? You  
21 shouldn't be talking to me about that?

22 A. I did not.

23 Q. And in fact, the issue Mr. Davis was talking to you about  
24 was an issue that was before the city council, correct?

25 A. It was. Yes, sir.

1 Q. So you're one of the -- one of the right people to talk to  
2 about it. Is that fair?

3 A. You know, I guess it depends on what the standards have been  
4 that you followed before then if I was the right person to talk  
5 to or not.

6 Q. So you don't believe that it's -- members of the city  
7 council are appropriate people to talk to about ordinances that  
8 are before the council?

9 A. I do.

10 Q. You do. Okay.

11 A. I do, but --

12 Q. I apologize if I misunderstood your answer.

13 A. But if there is an internal way to reach the council, then  
14 those steps should be followed prior to a contact with myself or  
15 other council members.

16 Q. Now, we already talked about your reference to an open-door  
17 policy, okay?

18 A. Yes, sir.

19 Q. And that you didn't put any limitations on your open-door  
20 policy when you told the firefighters. You didn't say, I have  
21 an open-door policy except that you need to jump through this  
22 hoop and this hoop and this hoop and this hoop, and then maybe  
23 at the end you might be able to talk to me. That isn't what you  
24 told the firefighters.

25 A. I did not, because those are internal parameters that are

1 put on employees.

2 Q. Regardless of your reason for not telling them that --

3 A. Yes, sir.

4 Q. -- you didn't tell them that, correct?

5 A. No, sir.

6 Q. And at the time that you had this conversation with  
7 Mr. Davis, you didn't believe you were doing anything wrong by  
8 talking to him, did you?

9 A. No, sir.

10 Q. And you didn't tell Mr. Davis that, I'm sorry, you need to  
11 bring this up with someone else. You didn't question him about  
12 that.

13 A. No, sir.

14 Q. There was no question even of whether he had spoken to  
15 anybody about that.

16 A. No, sir.

17 Q. As a member of the city council, your concern was to hear  
18 what the individual had to say and give it what worth you think  
19 it's worth in determining what you're going to do with it. Is  
20 that fair?

21 A. Correct. Yes.

22 Q. And at the time of the phone conversations, to the best of  
23 your knowledge and belief at that time, you didn't believe that  
24 Mr. Davis had done anything wrong by calling you up, did you?

25 A. No.

1 Q. And you certainly didn't tell him he had done anything wrong  
2 by calling you up.

3 A. No.

4 Q. And with respect to this call, I guess we've been able to  
5 pinpoint it to the afternoon or perhaps early evening of April  
6 17th of 2006, correct?

7 A. Correct.

8 Q. Do you have a typical time that you leave the office in the  
9 evening?

10 A. I do not. It just depends on what meetings are going on  
11 that day in the morning or in the afternoon. Or sometimes I  
12 come by and retrieve messages or stop by and sign paperwork. So  
13 I don't really have a -- outside of the set meetings, I don't  
14 really have -- or set appointments, I don't have a set schedule  
15 to be in the office.

16 Q. Okay. So you've told us the best you can in terms of  
17 narrowing down what time of day that phone call occurred,  
18 correct?

19 A. I would -- obviously, it was after twelve whatever, 50, and  
20 before, I would think, five o'clock.

21 Q. Okay. And what makes you believe it was probably before  
22 five o'clock? Are you typically out of the office by five  
23 o'clock?

24 A. Everyone starts locking up and going home.

25 Q. Okay. They don't lock you in, sometimes?

1 A. Sometimes they do. Yes, sir. But I have a key.

2 Q. Oh, there you go. You're the mayor; you should have a key.

3 Now, at the time of that phone conversation, you, sir, did  
4 not believe that your conversation with Mr. Davis was likely to  
5 cause disruption or problems in the department?

6 A. No.

7 Q. To the best of your knowledge, the phone call didn't disrupt  
8 the ability of the department to respond to calls or any of the  
9 business that they undertook in the next several days?

10 A. I'm very separated from that, so I wouldn't know that.

11 Q. To the best of your knowledge, then, no.

12 A. No.

13 Q. Now, subsequent to that phone call, at a certain point in  
14 time, you learned from one of your fellow council members that  
15 Mr. Davis had been fired; is that correct?

16 A. Correct.

17 Q. And was that Council Member Bush?

18 A. Councilman Bush. Yes, sir.

19 Q. Okay. Do you know when you heard that from Councilman Bush?

20 A. I was going out of town. And I remember, because I hadn't  
21 read the paper. I think I had left early and I was on the road  
22 when I got a phone call from Councilman Bush that informed me  
23 that he had been fired.

24 Q. Okay. Do you know whether it was in -- well, what's your  
25 best recollection as to when that call occurred?

1 A. I don't -- I don't remember. It was -- I think it was a few  
2 days afterward, because I was surprised, because I hadn't heard  
3 it before.

4 Q. Okay. So --

5 A. So I think some time had lapsed between the actual  
6 termination and me hearing about it.

7 Q. Okay. Do you believe that it was more than a few days had  
8 lapsed before you heard about it?

9 A. I would -- I would think three, four or five, six days,  
10 something like that, if I had to guess.

11 Q. Okay. So I guess it's fair to say that you heard about it  
12 within a week of it happening?

13 A. Yes, sir. I would think that would be fair.

14 Q. That would fit your recollection?

15 A. (Nods head)

16 Q. Now, sir, you yourself never recommended that Mr. Davis be  
17 disciplined in any manner because he called you on the phone,  
18 did you?

19 A. No.

20 Q. You yourself didn't urge or suggest or encourage an  
21 investigation into that phone call.

22 A. No. And I think you -- just to add to that, I think you've  
23 got to understand what the position of the mayor and council is  
24 defined as versus the day-to-day operations of the city. So if  
25 I would have recommended anything, it would have been a

1 violation of the charter.

2 Q. Okay. Well, let me ask the question differently, then.

3 A. Yes, sir.

4 Q. Following your phone call with Mr. Davis -- let's say  
5 between the phone call and when you learned of the termination  
6 from Mr. -- Councilman Bush, regardless of whether you had the  
7 authority or didn't have the authority, you were never of the  
8 opinion during that time period that Mr. Davis should be  
9 investigated or disciplined.

10 A. Based on the knowledge that I had at that time, no.

11 Q. In fact, as you already told us, at the time of the  
12 conversation, you didn't think that there was anything wrong  
13 with it.

14 A. No.

15 Q. Now, when you learned that Mr. Davis had been terminated, at  
16 some point in time am I correct that your understanding was that  
17 the triggering event that resulted in the termination was that  
18 phone call, correct?

19 A. That was a report in the paper. Yes, sir.

20 Q. And is that where you received your information as to the  
21 circumstances surrounding Mr. Davis's termination?

22 A. That was the secondhand information that I had received from  
23 Mr. Bush. And that's where he had gotten it from.

24 Q. Okay.

25 A. I think that's where he had gotten it from.

1 Q. What did you do with that information when you got it? Did  
2 you ask anybody about it?

3 A. I called the city manager at that -- I don't know if I  
4 called him right after that or I ran into him. I had a  
5 conversation with the city manager after that and just asked  
6 him, just is it true that Mr. Davis was terminated, just --  
7 because I was curious about it.

8 Q. Okay. And I understand that the city manager confirmed that  
9 for you, correct?

10 A. He did.

11 Q. Now, is it your testimony that in that conversation you did  
12 not inquire and the city manager did not offer an explanation  
13 for the termination?

14 A. Not at that time, because at that time, it was all  
15 internal. And those records are not shared with the city  
16 council, as far as personnel records or anything like that.

17 Q. So the answer is no?

18 A. No.

19 Q. But still, up to that point you didn't think you had done  
20 anything wrong, correct?

21 A. No.

22 Q. And other than the fact Mr. Davis had been terminated, you  
23 didn't have any knowledge that he had done anything wrong in  
24 calling you at that point in time.

25 A. No.

1 MR. STEELE: Thank you.

2 THE COURT: Mr. McKoon.

3 CROSS-EXAMINATION

4 BY MR. MCKOON:

5 Q. Mayor Hardin, let me just ask you a few questions about this  
6 situation. You've never been a firefighter, have you?

7 A. No, sir.

8 Q. Or a police officer?

9 A. No, sir.

10 Q. Or any kind of public safety person.

11 A. No, sir.

12 Q. And the way the Phenix City government functions, as I  
13 understand it, the mayor and the council, if we had an  
14 organizational chart, would be over here to the side; and then  
15 there's a line down to city manager. Is that correct?

16 A. Yes, sir.

17 Q. And is it fair to say that the city council and the mayor  
18 basically serve as a policy making body and a -- kind of a board  
19 of directors and that the city manager runs the day-to-day  
20 functions of the city?

21 A. That is correct.

22 Q. I mean whether that's a good thing or a bad thing, that's  
23 the way our government's set up; is that right?

24 A. That is correct. Yes, sir.

25 Q. And then under the chain of command of the city manager

1 would be the department heads?

2 A. Yes, sir.

3 Q. Some of which would be like the police chief and the fire  
4 chief and the head of building inspection, parks and rec, stuff  
5 like that; is that right?

6 A. Yes, sir.

7 Q. Who hires and fires those people, the department heads?

8 A. The city -- the city manager.

9 Q. And that's his -- that's in his sole discretion to do that.

10 A. Yes, sir.

11 Q. And basically, does everybody under that chain -- does it  
12 all filter up to the city manager?

13 A. It does. Yes, sir.

14 Q. Are you in any way in the chain of command?

15 A. No, sir.

16 Q. Is it your responsibility to know the standard operating  
17 procedures of the Phenix City Fire Department?

18 A. No, sir.

19 Q. Or the Phenix City Police Department?

20 A. No, sir.

21 Q. That would be the responsibility of the people that work in  
22 those departments, wouldn't it?

23 A. That's the way our government is set up. Yes, sir.

24 Q. So if Mr. Davis called you, you wouldn't have any way of  
25 knowing what his policy was in regard to whether he should be

1 calling you or not; is that correct?

2 A. No, sir.

3 Q. But he ought to know that.

4 A. I was --

5 MR. STEELE: Objection. Speculative.

6 THE COURT: Yes. I sustain.

7 MR. MCKOON: Okay.

8 Q. When he did call you, do you recall whether or not he  
9 identified himself as calling on behalf of the firefighters  
10 union?

11 A. He did not.

12 MR. STEELE: Objection. Relevancy.

13 MR. MCKOON: He -- that's what he testified to.

14 THE COURT: I think he's already testified. Overruled.

15 MR. MCKOON: I'm sorry.

16 THE COURT: Let me make clear. The plaintiff in this  
17 case is not contending that he was terminated because he was  
18 acting on behalf of the firefighters union, but it's a fact.  
19 It's in evidence. But he's not -- that's not an issue in the  
20 case. He's not claiming they terminated him because of his  
21 actions on behalf of the firefighters association.

22 Go ahead.

23 Q. My point is when Mr. Davis called you, did he identify  
24 himself as calling on behalf of the union or said he was the  
25 union president calling on their behalf?

1 A. He did not.

2 Q. All right. And the message that you looked at a minute ago,  
3 did it say anything about David Davis, union president, on it?

4 A. No, sir.

5 Q. When you got the message, did you recognize the name David  
6 Davis, I mean as far as any person that you knew other than just  
7 somebody from the public calling?

8 A. I -- I knew of David Davis, but I didn't know if it was him  
9 that was calling. Obviously, there's people that share names.

10 Q. Okay. So when you got the message and you saw it was David  
11 Davis, you just returned the call.

12 A. Sure.

13 Q. Is that correct?

14 A. Yes, sir.

15 Q. And I believe you just previously testified he didn't  
16 identify himself as calling on behalf of anybody. He just said  
17 I'm calling to talk to you about this particular matter; is that  
18 right?

19 A. Questions about the particular ordinance. Correct.

20 Q. Do you remember what his question was about it?

21 A. It was about the -- the length of the probationary period  
22 and why it was being changed and then who it applied to, whether  
23 it be new hires or existing employees.

24 Q. Did he seem to have some confusion about whether it applied  
25 to veteran employees as well as new hires?

1 A. He did.

2 Q. And what did you tell him about that, if you recall?

3 A. Basically, the ordinance applied to new hires only.

4 Q. A little bit about the way the council works. When an  
5 ordinance comes before council, does it just come up one time?

6 A. No, sir.

7 Q. Tell the ladies and gentlemen of the jury what is done in  
8 regard to notifying the public of an ordinance and the  
9 availability for people to get the ordinance if they want to  
10 look at it in advance.

11 A. Well, first we put it -- first it's advertised in the paper  
12 before -- typically on the Sunday in the local newspaper before  
13 it's introduced on the Tuesday. And then we'll put an ordinance  
14 on a first reading. So it will be placed on first reading, and  
15 it allows two weeks of comments. So it's advertised again for  
16 the two weeks before it's put on the second and final reading.  
17 So there's several -- at least two and a half weeks before --  
18 when it's first advertised before it's voted on for the final  
19 time, the second and final time.

20 Q. Now, the -- when Mr. Davis called you, do you recall whether  
21 it was not -- he called you before the first reading or before  
22 the second reading?

23 A. It was the -- according to the dates, it was the day before  
24 the second reading.

25 Q. All right. The ordinance itself, is it available to people

1 in the city clerk's office if they want to come get a copy of  
2 it?

3 A. Yes, sir.

4 Q. Along with the agenda for the council meeting?

5 A. Yes, sir. And again, those -- the agendas are advertised  
6 before, a couple of days before the meeting, in the local paper.

7 Q. These -- a proposal of this kind that affected the building  
8 inspection department, police department, and the fire  
9 department, was that something that was drafted by the council?

10 A. No, sir.

11 Q. Do you know where that proposal came from; in other words,  
12 who the authors of it were?

13 A. Sure. And we -- as I spoke of before, typically in these  
14 type of situations when you see an ordinance like this, you want  
15 to know, you know, what's the reasoning, who's the author, or  
16 why was it written up. And in this particular case, the  
17 questions that were brought up were answered -- the city manager  
18 proposed the ordinance after speaking with the building  
19 official -- the chief building official and the police chief and  
20 the fire chief.

21 Q. So you understood that the proposal actually came up through  
22 the public safety departments to the city manager.

23 A. Well, I'd say public safety and code and enforcements on the  
24 building side.

25 Q. Okay.

1 A. I don't know if they're considered -- I don't know if  
2 they're classified as public safety, per se, but --

3 Q. But those three departments.

4 A. Correct.

5 Q. They got together, put the ordinance together, took it to  
6 the city manager, and the city manager then brings it to  
7 council. Is that the way that normally works?

8 A. Yes, sir.

9 Q. Are there ever occasions when ordinances like that come  
10 before council maybe for the first time or in a work session and  
11 they're discussed and the department heads are there and make  
12 changes to what they're going to do?

13 MR. STEELE: Objection. Relevancy.

14 THE COURT: Overruled.

15 Q. You may go ahead.

16 A. Yes, sir. Typically, there will be a discussion period; and  
17 if -- if there is a change, we'll table the ordinance until some  
18 further research is done and maybe a change to the ordinance.  
19 And then we'll go back -- either amend it or go back through the  
20 process of reintroducing it.

21 Q. And does the council in matters of this kind, matters  
22 affecting these departments and an ordinance like this, do they  
23 usually rely upon the judgment of those department heads?

24 A. We do.

25 Q. And do you usually take their advice most of the time if

1 they make a proposal such as this?

2 A. Yes. Yes, sir, we do.

3 Q. And is it pretty much up to them to -- as to what ordinance  
4 they want to bring you?

5 A. Yes, sir.

6 Q. And even though you're the final decision makers -- you-all  
7 have to either pass it or not pass it -- they are the ones that  
8 work on the proposal, put it together, take it to their city  
9 manager, and then have it brought to you.

10 A. Yes, sir.

11 Q. Is that correct?

12 A. Yes, sir.

13 Q. You were asked a moment ago a question about whether or  
14 not -- or what you knew about this situation at the time  
15 Mr. Davis was terminated and whether or not you -- based on  
16 that, you would have terminated him or were surprised about it,  
17 some kind of question like that. And I believe your answer was  
18 no; is that right?

19 A. Correct. Yes, sir.

20 Q. My question is since that time, have you learned additional  
21 information about this situation?

22 A. Yes, sir.

23 Q. And do you also understand now that in addition to the --  
24 this so-called five-minute phone call, that there were other  
25 reasons for Mr. Davis's termination?

1 MR. STEELE: Objection. Relevancy. This witness's  
2 knowledge or lack of knowledge of events subsequent to the  
3 termination is not relevant.

4 MR. MCKOON: It is my --

5 THE COURT: Ordinarily, I might agree. But he was  
6 asked about his opinion based on what he knew at the time, and I  
7 think this is in response to that. Overruled.

8 Q. (Mr. McKoon, continuing:) Go ahead.

9 A. Repeat --

10 Q. Do you remember the question?

11 A. No, sir. Would you please repeat it?

12 Q. Let me repeat it. I guess it's this sort of question. If  
13 you knew then everything you knew now, would you have agreed  
14 with the termination of Mr. Davis?

15 A. Yes, sir.

16 MR. MCKOON: That's all I have.

17 THE COURT: Redirect?

18 MR. STEELE: Yes, Your Honor.

19 REDIRECT EXAMINATION

20 | BY MR. STEELE:

21 Q. Now, Mr. Mayor, you were just asked questions about the  
22 structure of the government and department heads and city  
23 manager. And you were asked, and you said, well, you're not  
24 part of the chain of command. But isn't it true, Mr. Mayor,  
25 that the city manager is hired by the city council?

1 A. Yes, sir.

2 Q. The city council has the authority to fire the city manager?

3 A. Yes, sir.

4 Q. The city manager reports to the city council?

5 A. When you say reports, not in the day-to-day activities of  
6 the city.

7 Q. If the city council calls the city manager to a meeting to  
8 address a topic, is it expected that he'll come?

9 A. Yes, sir.

10 Q. And if you request information from the city manager, is it  
11 expected that the city manager, having that request from you as  
12 a council member, should provide that information?

13 A. It depends on what that information is.

14 Q. Okay. So sometimes you ask him for information that you  
15 don't expect him to provide?

16 A. Well, if I ask him, I'd always expect him. But there is the  
17 rule of law that says certain things we cannot discuss. And a  
18 lot of them have to do with the day-to-day operation of the  
19 city, especially where employees are concerned, because we're  
20 governed by a charter.

21 Q. Well, Mr. Mayor, there's no evidence in this case that you  
22 asked the city manager for any information relating to David  
23 Davis and had that request denied, correct?

24 A. No, sir.

25 Q. That didn't occur. Now, you indicated that -- and as a

1 member of the council, that you're not required to be  
2 knowledgeable about all of the SOPs within the fire department;  
3 is that correct?

4 A. Correct.

5 Q. You also have merit system rules and regulations within the  
6 city, don't you?

7 A. We do. Yes, sir.

8 Q. And the merit system rules and regulations, they're  
9 effectively the laws that govern the operation of the employees  
10 of the city?

11 A. Yes, sir.

12 Q. And the merit system rules and regulations are adopted by  
13 and, on occasion, amended by the city council?

14 A. They are. Yes, sir.

15 Q. They're not adopted and approved and -- by the city  
16 manager. That's the authority of the council to do that,  
17 correct?

18 A. It is. Yes, sir.

19 Q. And as I understand your testimony, that when Mr. Davis  
20 called you, to the best of your knowledge or to the best of your  
21 recollection, he was just calling you as a citizen to ask you  
22 some questions about an ordinance. He -- from your  
23 recollection, he didn't say he was calling on behalf of an  
24 organization.

25 A. Correct.

1 Q. Now, you've already testified that you were aware prior to  
2 this time, right, that Mr. Davis was in fact an officer of the  
3 firefighters association?

4 A. Yes, sir.

5 Q. So you knew that before he called.

6 A. Yes, sir.

7 Q. Now, when -- you said, gee, you know, it said David Davis; I  
8 didn't know what David Davis -- which David Davis it was on the  
9 message. And I appreciate where you're coming from on that,  
10 Mr. Mayor. But when you saw the message and it said David Davis  
11 and you know that there's a firefighter by that name, you know  
12 he's the head of the firefighters association that gave you a  
13 lot of support when you ran for election, did it cross your mind  
14 that it might be this David Davis who had left you the message?

15 A. Well, certainly it crossed the mind, but that doesn't mean I  
16 knew who it was.

17 Q. I'm not asking if you knew with certainty.

18 A. Yes.

19 Q. But you didn't look at this and say I have no idea who this  
20 might be, correct?

21 A. Correct.

22 Q. And when this David Davis answered the phone, you weren't  
23 shocked or surprised that it was that David Davis that had left  
24 you the message, right?

25 A. No.

1 Q. Now, you testified at some length about how the city council  
2 goes about advertising what -- meeting agendas or printing  
3 proposed ordinances in the newspaper. My question to you, sir,  
4 is do you have any personal knowledge as to whether David Davis  
5 had seen or was aware of this particular proposed ordinance at  
6 any time prior to April 16th, 2006?

7 A. At the time of the call? Is that what -- the question?

8 Q. Do you have any personal knowledge as to when David Davis  
9 saw in the newspaper or learned about this particular proposed  
10 ordinance?

11 A. Well, a lot of information that I was privy to after I was  
12 sued -- I was exposed to a lot of information. So after that, I  
13 did find out that he was privy to the information prior to the  
14 phone call. But --

15 Q. And that's based on your personal knowledge?

16 A. That's based on information that I had read.

17 Q. So it's not based on your personal knowledge. You can't  
18 testify as you sit here today that you know for a fact that  
19 David Davis had ever seen the ordinance that you voted on at any  
20 time prior to April 16th. Based on your own personal knowledge,  
21 you can't tell the jury that, can you?

22 A. Not with certainty. No, sir.

23 Q. In fact, you're just basing it on things somebody else told  
24 you, correct?

25 A. As -- as I am basing that he didn't know about it by what he

1 told me or what you're telling me, yes.

2 Q. That's not my question.

3 A. Well, repeat the question again.

4 Q. Yeah. My question is that when you said, oh, he knew about  
5 it earlier, you're basing that on just some information somebody  
6 else told you.

7 A. Yes.

8 Q. Not on any personal knowledge that you have.

9 A. No.

10 Q. You weren't present when anybody told Mr. Davis about it?

11 A. Nor was I present when he read it. No.

12 Q. Correct. Now, among all of these other ways that  
13 information is distributed with respect to proposed ordinances,  
14 on an ordinance like this that involved the fire department and  
15 the police department and the building inspectors, it's not the  
16 policy of the city, is it, to distribute that ordinance to the  
17 police stations and fire stations and to post it and to take any  
18 efforts to notify those individuals above and beyond the efforts  
19 you've already described in the newspaper to let the public know  
20 about it, correct?

21 A. We -- our meetings are televised, and we do post all the  
22 pending ordinances on a bulletin board in city hall.

23 Q. Okay. What about at the fire stations?

24 A. I wouldn't know that.

25 Q. You wouldn't know that. Now, Mr. Mayor, on

1 cross-examination, you talked about how much you rely on the  
2 input of the city manager or department heads when an ordinance  
3 comes before you relating to a particular department, correct?

4 A. Yes, sir.

5 Q. And Mr. McKoon got you to agree how -- how important that  
6 information is to you and all the work that the department heads  
7 or the city manager may put into a proposed ordinance, correct?

8 A. Yes, sir. Correct.

9 Q. Now, make no mistake about it, Mr. Mayor. The city council  
10 isn't a rubber stamp for the police chief, the fire chief, or  
11 the city manager, is it?

12 A. No, sir.

13 Q. You make your own determination on whether to support or  
14 oppose an ordinance that's before you.

15 A. Yes, sir.

16 Q. You don't vote yes simply because it was proposed by the  
17 fire chief or the police chief. You vote yes based upon the  
18 totality of the information that you've collected and whether  
19 you believe it's a good idea, correct?

20 A. If it's in the best interests of the city. Yes, sir.

21 Q. Right. In your opinion, based on all the information you  
22 have.

23 MR. STEELE: Nothing further.

24 THE COURT: Any redirect?

25 MR. MCKOON: Just a couple things.

1 THE COURT: Recross.

2 RECROSS-EXAMINATION

3 BY MR. MCKOON:

4 Q. Just to be clear, you're not in the firefighters' chain of  
5 command in any way, are you?

6 A. No, sir.

7 Q. And you were asked some questions earlier about this  
8 open-door policy. As part of your open-door policy, I mean you  
9 were campaigning for office; is that right?

10 MR. STEELE: Objection, Your Honor. That's beyond the  
11 scope of redirect.

12 THE COURT: That's beyond the scope of redirect. I  
13 sustain that.

14 MR. MCKOON: All right. I don't have anything further,  
15 then.

16 THE COURT: You may come down.

17 MR. MCKOON: Your Honor, may he be excused?

18 THE COURT: Any objection from the plaintiff?

19 MR. STEELE: No objection.

20 THE COURT: All right. You're free to go.

21 Call your next witness.

22 MR. BROWN: Plaintiffs call Ms. Anne Land.

23 THE COURT: Okay.

24 MR. BROWN: Your Honor, point of clarification. In  
25 accord with your pretrial conference, I prefer to stand here,

1 with your permission, please.

2 THE COURT: That's fine.

3 MR. MCKOON: While the witness is coming, may we  
4 approach?

5 THE COURT: All right. Just be at ease, ladies and  
6 gentlemen, just a minute.

7 Go ahead and swear in the witness.

8 THE CLERK: Would you raise your right hand.

9 (The witness is sworn )

10 THE CLERK: Be seated.

11 (Bench conference, as follows:)

12 MR. MCKOON: Judge, just very briefly. And I apologize  
13 for the interruption.

14 THE COURT: Just a minute. Okay. Make it snappy.

15 MR. MCKOON: I notice there's been some passing of  
16 notes to Mr. Malone back here and Mr. Brown has been leaving the  
17 room and coming back, and I don't know what's that all about. I  
18 know the Court instructed everybody about the rule being  
19 invoked. And I don't know what it's about; but I think if he's  
20 going to be in here, he shouldn't be getting up and leaving the  
21 room with notes in his hand.

22 THE COURT: Well, I don't know what it's about either,  
23 but it wouldn't be appropriate for somebody to sit in the room  
24 and then go out and discuss testimony with any of the  
25 witnesses. So I'll ask counsel to make sure that's not

1 happening.

2 MR. BROWN: You can be assured that's not happening.

3 MR. STEELE: I'll be happy to speak with him.

4 MR. MCKOON: Thank you.

5 (Bench conference concluded)

6 THE COURT: All right. Mr. Brown.

7 **ANNE LAND**, the witness, having been duly sworn,  
8 testified, as follows:

9 DIRECT EXAMINATION

10 BY MR. BROWN:

11 Q. Ms. Land, would you please state for the record where you  
12 live.

13 A. Columbus, Georgia.

14 Q. And what is your address, for the record?

15 A. 1506 Luckie Drive.

16 Q. And what is your occupation?

17 A. Firefighter, Phenix City Fire Department.

18 Q. And how long have you been an employee of the Phenix City  
19 Fire Department?

20 A. Almost ten years.

21 Q. And what is your job classification with the fire  
22 department?

23 A. I'm the administrative captain.

24 Q. Who is your direct supervisor?

25 A. My direct supervisor is Fire Chief Wallace Hunter.

1 Q. Captain Land, did you receive a subpoena to appear in court  
2 and give testimony today?

3 A. Yes, sir.

4 Q. And are you at all reluctant to give your testimony today in  
5 open court?

6 A. Yes, sir.

7 Q. Which party in this proceeding subpoenaed your appearance?

8 A. David's attorneys.

9 Q. And just to clarify the record, I will attempt to refer and  
10 make sure you understand Mr. Davis is the plaintiff in the case  
11 and the city is the defendant.

12 A. Yes, sir.

13 Q. Prior to your receiving your subpoena to appear, were you  
14 made -- were you made aware that the plaintiff desired your  
15 testimony in this case?

16 A. Yes, sir.

17 Q. And after learning that the plaintiff desired your testimony  
18 in the case, did you contact the plaintiff's attorneys seeking  
19 advice and input about your testimony?

20 A. Yes, sir.

21 Q. Did you seek permission from your superior officer prior to  
22 speaking with the plaintiff's attorneys?

23 A. Yes, sir, I did.

24 Q. And why did you do that?

25 A. In the merit system, it states that we have to contact the

1 city attorney before speaking to any other law firm or attorney.

2 THE COURT: Captain Land, will you pull that microphone  
3 over a little closer to you so we can all hear you? Just bend  
4 it over a little. There you go. Thank you. Go ahead.

5 Q. Were you specifically informed at any time that concerning  
6 this lawsuit, that you needed to contact your superiors prior to  
7 speaking with any attorney?

8 A. Not that I recall.

9 Q. At some time after speaking with plaintiff's attorneys, were  
10 you asked to speak with the city's attorneys in this case, the  
11 defendant?

12 A. Yes, sir.

13 Q. And how did that occur, Captain Land?

14 A. I was with the fire chief, and Mr. McKoon had called the  
15 fire chief on his cell phone. And he -- Chief Hunter said that  
16 I was with him, so he handed me the phone and said that  
17 Mr. McKoon wanted to speak with me.

18 Q. And what happened next?

19 A. He just asked me what we had -- what we had talked about.  
20 And then after that, they called the battalion chief that was on  
21 duty and asked me to come down to Mr. McKoon's office to speak  
22 with him.

23 Q. He asked you -- you said who -- we -- what we had talked  
24 about. We, meaning who?

25 A. David -- the -- David Davis's attorneys. What we had talked

1 about.

2 Q. And did you have any choice in the matter as to whether or  
3 not you would be taken to visit with the defendants' attorneys?

4 A. No, sir.

5 Q. Did you consider that directive an order?

6 A. Yes, sir.

7 Q. Why?

8 A. I wasn't asked. I was just told to go on down there.

9 Q. After being made aware that the plaintiff's attorneys wanted  
10 to speak with you, did we in fact discuss your (sic) case?

11 A. Yes, sir.

12 Q. And during the course of that conversation, were we  
13 exploring the factual matter that you understood about --  
14 relating to this case?

15 A. Yes, sir.

16 Q. And did you seek the input and advice of plaintiff's  
17 attorneys concerning the testimony you would give today?

18 A. Yes, sir.

19 Q. After we discussed what possible testimony you may be giving  
20 in court as you're sitting in the witness stand today, were you  
21 told at some point in time to report again to the defendants'  
22 attorneys?

23 A. Yes, sir. Mr. McKoon asked that if I would let him know  
24 after we had spoken. He wanted to know what we talked about.

25 Q. And did you subsequently speak with them?

1 A. Yes, sir.

2 Q. Were you on duty?

3 A. Yes, sir.

4 Q. And were you on duty the first instance that that occurred?

5 A. Yes, sir.

6 Q. Were you given a choice from anyone in the fire department  
7 on the second event of this that you could decline to speak with  
8 the defendants' attorneys?

9 A. No, sir.

10 Q. Did you consider the instruction that you received on the  
11 second event of being asked to speak with the defendants'  
12 attorneys, that that was an order?

13 A. Yes, sir.

14 Q. Did you feel that if you had declined to follow that order,  
15 you would be subject to discipline?

16 A. Yes, sir.

17 Q. What did the defendants' attorneys ask you on that occasion?

18 A. What we had spoken about.

19 Q. They attempted to discern the facts of the plaintiff's case,  
20 as you knew them?

21 A. They were asking me about a statement that I had written and  
22 like, again, just going over what we had talked about again, for  
23 the second time.

24 Q. Were you at that event given an instruction by the  
25 defendants' attorneys that you could decline speaking to them?

1 A. No, sir.

2 Q. Were you told that you could decline to speak to me?

3 A. Yes, sir.

4 Q. Who told you that?

5 A. Mr. McKoon.

6 Q. Did that event cause you more reluctance to give testimony  
7 in this proceeding?

8 A. Yes, sir.

9 Q. And were you ever contacted subsequent to the second event  
10 to speak with the defendants' attorneys?

11 A. I was contacted three times, twice in person and once on the  
12 phone.

13 Q. And was the phone conversation the third event of being  
14 contacted by defense attorneys?

15 A. The second.

16 Q. That was the second.

17 A. Yes, sir.

18 Q. What was asked to you on that telephone conversation,  
19 Captain Land?

20 A. That was after I had spoken with David's attorneys, and they  
21 wanted to know what we spoke about.

22 Q. And did you believe on that occasion that you had a choice  
23 of whether or not you wished to speak to defendants' attorneys?

24 A. No, sir.

25 Q. And were you on duty --

1 A. Yes, sir.

2 Q. -- at that time? Did you feel that if you had wanted to  
3 decline to speak to defendants' attorneys, that you could be  
4 subject to discipline?

5 A. If I declined to talk to them, yes.

6 Q. Would you like to have had a choice?

7 A. Yes, sir.

8 Q. And what were you asked by defense counsel on the third  
9 event of having been contacted by them?

10 A. Just what we had talked about.

11 Q. And what did you tell them?

12 A. I told them that y'all wanted to know what my rank in the  
13 department was, how things were going at this time in the  
14 department, and about the meeting that we had with the mayor.

15 Q. And is that what we had discussed as well?

16 A. Yes, sir.

17 Q. And did they want to know details about our conversation?

18 A. No, sir. He just, you know, asked me what we spoke about,  
19 and I told him.

20 Q. Did you feel you could be held insubordinate if you declined  
21 to cooperate with defense counsel?

22 A. Yes, sir.

23 Q. And you didn't want to take a chance.

24 A. Right.

25 Q. Has this sequence of events that we have been discussing

1 made you even more reluctant to be on the stand today and give  
2 testimony?

3 A. Yes, sir.

4 Q. Does it make you afraid?

5 A. Yes, sir.

6 Q. Why?

7 A. I don't want to be fired.

8 MR. BROWN: Your Honor, we'd like to have permission to  
9 approach the bench, please.

10 THE COURT: All right. Let's make it fast.

11 (Bench conference, as follows:)

12 THE COURT: All right.

13 MR. BROWN: Your Honor, in view of your in-camera  
14 examinations of yesterday, this line of questioning that we have  
15 engaged in has been intended to establish that there is the  
16 sufficient identification of this witness with the adverse party  
17 in this case. And we view this as falling under Federal Rule of  
18 Civil Procedure -- excuse me -- the Federal Rules of Evidence  
19 611 subparagraph (c) and as well under the authority of the  
20 Eleventh Circuit's holding in *Haney versus Mizell Memorial*  
21 *Hospital*, 744 F.2d 1467 -- is that the correct interpretation as  
22 held by the circuit of the federal rule of evidence is that the  
23 plaintiff is not required to make a threshold showing of actual  
24 hostility by this witness and, therefore, we should be allowed  
25 to examine this witness as an adverse party.

1                   At this point, Your Honor, we frankly do not know whose  
2 witness she is. We have established that she has had multiple  
3 contacts with the defendant. She is a captain in the  
4 department. And we respectfully ask for you to reconsider  
5 yesterday's ruling in that she has stated for the record now  
6 under oath that she was frightened and afraid to give  
7 testimony. We request to treat her as an adverse witness and  
8 lead her.

9                   THE COURT: Well, I've heard what you said, but I  
10 haven't heard anything that would make me feel that she's  
11 adverse to you. If she answers questions in a way that you feel  
12 like you need to -- that you need to ask her leading questions  
13 after that, you know, try; if there's no objection, go forward.  
14 I'm not going to give you a blanket leave to lead her based on  
15 what I've heard. So I -- she can't be treated as an adverse  
16 witness, but I'll certainly be lenient as to leading questions  
17 if it appears that that's necessary.

18                   MR. BROWN: We respectfully object to your ruling, but  
19 we will proceed as you direct.

20                   THE COURT: All right. Let's move on.

21                   MR. BROWN: Thank you, sir.

22                   (Bench conference concluded)

23 Q. (Mr. Brown, continuing:) Captain Land?

24 A. Yes, sir.

25 Q. Do the firefighters of Phenix City have a firefighters

1 association of some sort?

2 A. Yes, sir.

3 Q. And are you a member of that organization?

4 A. Yes, sir, I am.

5 Q. Do you hold an office in that association?

6 A. No, sir.

7 Q. Do you attend meetings of that association?

8 A. Yes, sir.

9 Q. How frequently?

10 MR. MCKOON: Judge, I'm going to object. I'm not clear  
11 about the relevance of this. I thought we were out of that.

12 THE COURT: What is the relevance?

13 MR. BROWN: Background.

14 THE COURT: What kind of background would be relevant  
15 to the issue?

16 MR. BROWN: Background along the line of -- regarding  
17 her association that has been mentioned -- or her affiliation  
18 with the same association as the plaintiff was a member.

19 THE COURT: You can ask her about that. Let's move on  
20 to what you want to get into.

21 MR. BROWN: Okay.

22 Q. Captain Land, did you recall attending a meeting of the  
23 firefighters association in the fall of 2005 wherein a  
24 journalist may have attended?

25 A. Yes, sir.

1 Q. And do you know who that reporter was?

2 A. I believe it was Chuck Williams.

3 Q. And what newspaper did he write for?

4 A. *Ledger-Enquirer*.

5 Q. And do you know why he attended?

6 A. What I understood him to say is he wanted to hear our side  
7 of the story.

8 Q. And did he tell you anything else about why he had appeared  
9 at the meeting?

10 A. He said that he had already talked to the fire chief and the  
11 personnel and the city manager and gotten their side and that he  
12 had permission to speak to us, and that he wanted to hear our  
13 side of the story.

14 Q. And did you infer from his comments that you had permission  
15 to speak with him?

16 A. Yes, sir.

17 Q. And did you make the same inference from every other member  
18 of that organization that was at that meeting?

19 A. Yes, sir.

20 Q. Did anyone from the department or the city ever dispute that  
21 fact to you?

22 A. No, sir.

23 Q. If you would, please, would you open the binder in front of  
24 you? And I would like to ask you to look at Exhibit #10-E. Can  
25 you identify that document, Captain Land?

1 A. Yes, sir.

2 Q. What is it?

3 A. It's a statement that I had written.

4 Q. And would you mind reading that statement, please? Excuse  
5 me.

6 MR. BROWN: Plaintiffs move into admission Exhibit  
7 #10-E, please, Your Honor.

8 THE COURT: It's admitted.

9 Q. Would you please read for the record the statement contained  
10 on that sheet.

11 A. To whom it may concern. I was contacted by the journalist  
12 of the *Ledger-Enquirer* for my personal views. The journalist  
13 advised me that he had spoken with the fire chief, city  
14 attorney, personnel for the fire department, and personnel for  
15 the city. I was not on duty during this time that I spoke with  
16 the journalist, and I was told that the fire chief knew that the  
17 journalist was talking to other people on the department.

18 Q. And to the best of your knowledge, is that a true and  
19 accurate copy of the statement that you had given at that time?

20 A. Yes, sir.

21 Q. It is not dated, is it?

22 A. No, sir, it's not.

23 Q. Can you tell the jury approximately when you gave that?

24 A. It was approximately a couple of days after we had spoken  
25 with the journalist.

1 Q. Did anyone from the management of the city or the department  
2 speak with you after the meeting concerning your attendance at  
3 that meeting?

4 A. The -- our assistant chief talked to us.

5 Q. And what did he tell you?

6 A. That we were not allowed to speak to any media without  
7 getting permission.

8 Q. And did you voluntarily provide the statement that you've  
9 just read into evidence?

10 A. We were told to write statements.

11 Q. And who told you to write that statement?

12 A. My assistant chief.

13 Q. And who was that?

14 A. I can't recall at this time who my assistant chief was at  
15 the time.

16 Q. Were you told to do anything else concerning your attendance  
17 at the meeting of the firefighters association that resulted in  
18 the article?

19 A. Not that I recall.

20 Q. Were you disciplined in any way for speaking to that  
21 reporter?

22 A. We were given counseling forms for speaking to the media.

23 Q. What is a counseling form?

24 A. It's a written document that goes into your file that states  
25 that you have been counseled about talking to the media. It

1 stays in your record.

2 Q. And what is the significance of that counseling form?

3 A. Basically, I mean if it happens again, I can be written up  
4 for it.

5 Q. And at that time, what was your understanding -- or at the  
6 time of the meeting -- of your right to speak to a member of the  
7 media off duty?

8 A. At that time, we didn't know that we could not speak to the  
9 media.

10 Q. Did you feel you were within your legal rights to do so?

11 A. Yes, sir.

12 Q. Was the union meeting with that reporter the only  
13 association meeting you ever attended?

14 A. No, sir.

15 Q. You attended other meetings?

16 A. Yes, sir.

17 Q. Did you ever attend any meetings of the firefighters -- of  
18 the firefighters association where the mayor was in attendance?

19 A. Yes, sir.

20 Q. Would you please describe or explain to the jury that event?

21 A. We had a meeting with the mayor before he was elected just  
22 talking to him about some of the problems that we had at that  
23 time, some of our concerns and issues. And he said that he had  
24 an open-door policy, that we could come talk to him, that he  
25 would look out for us and take care of us.

1       After he was elected, we had a retirement party for one of  
2 the guys, Todd Boatner, and he, you know, stated that -- you  
3 know, that we could come talk to him, that he would take care of  
4 us, he had an open-door policy, that we could come talk to him  
5 anytime and we would not suffer any repercussions for talking to  
6 him.

7 Q. Other than the testimony that you've just stated, what did  
8 an open-door policy mean to you?

9 A. I felt that we could go to his office anytime and talk to  
10 him and, you know, if we had any issues, talk to him and seek  
11 his advice and let him know what was going on.

12 Q. Did you ever personally take the mayor up on his invitation  
13 to walk through his open door?

14 A. No, sir.

15 Q. Did you believe you, though, had that right based on what he  
16 had told you?

17 A. Yes, sir.

18 Q. Do you believe that same right applied to every other  
19 firefighter?

20 A. Yes, sir.

21 Q. Do you -- or did you feel it was limited only to those  
22 firefighters who were in attendance at those meetings?

23 A. No, sir.

24 Q. Did -- other than the mayor, were there any other elected  
25 officials that appeared at association meetings?

1 A. Yes, sir. Ray Bush, the council member at large.

2 Q. Did Mr. Bush make any particular comments to the  
3 firefighters association?

4 A. He said that he had an open-door policy as well.

5 Q. So another council person.

6 A. Yes, sir.

7 Q. Do you recall -- and let me make sure I understand. Do  
8 you -- did you say -- do you recall meetings where the mayor  
9 attended both before he was elected and after he was elected?

10 A. Yes, sir.

11 Q. And he extended his open door at both of those events.

12 A. Yes, sir.

13 Q. Did you believe at that time that you had to seek permission  
14 from anyone else prior to taking the mayor up on his open-door  
15 policy?

16 A. No, sir, I didn't.

17 Q. Did he mention to the firefighters that they had to take any  
18 other steps before walking through his open door?

19 A. No, sir.

20 Q. Digressing back to the event where the reporter spoke at  
21 the -- or attended the association meeting, did you ever, after  
22 that time, speak to another member of the media?

23 A. No, sir, I did not.

24 Q. Did you do your best to comply with the rules and the  
25 regulations and guidelines of the department?

1 A. Yes, sir.

2 Q. And they were explained to you, correct?

3 A. Yes, sir.

4 Q. Do you know of any other fire department employee who spoke  
5 to the media after the -- the article was published?

6 A. Not to my knowledge.

7 Q. Do you know if the plaintiff ever spoke to the media again  
8 after that one event?

9 A. No, sir.

10 Q. Moving to a different matter, did you have occasion at some  
11 time after the newspaper article was published that the city was  
12 considering expanding the probation period for merit system  
13 employees?

14 A. Yes, sir.

15 Q. And when did that occur?

16 A. I'm not sure how long after that.

17 Q. Do you -- would you -- do you agree that it would be in the  
18 spring of 2006, about six months or so after the newspaper event?

19 A. That sounds about right.

20 Q. Okay. And at that time -- or excuse me. When did you first  
21 learn of it?

22 A. When David Davis called me and told me about it.

23 Q. So the plaintiff made a phone call to you and told you about  
24 the ordinance.

25 A. He left a voice mail on my cell phone.

1 Q. Did you return it?

2 A. No, sir, I didn't.

3 Q. Did you attempt to ascertain what the proposed ordinance was  
4 about?

5 A. We did ask on duty what the ordinance was about. And it was  
6 lack of communication, really, because we were unclear exactly  
7 what the ordinance was about at the time.

8 Q. Based on the knowledge that you had when you learned from  
9 the plaintiff that there was a proposed ordinance before city  
10 council, were you opposed to it?

11 A. At that time, I was. Yes, sir.

12 Q. And was it your understanding that the plaintiff shared that  
13 concern with you?

14 A. Yes, sir.

15 Q. Or that you shared it with him?

16 A. Yes, sir.

17 Q. Okay. So if I understand correctly, you never had a  
18 conversation with Mr. Davis prior to the voting of the ordinance?

19 A. No, sir, I didn't.

20 Q. But you shared his opinion.

21 A. Yes, sir.

22 Q. Did you believe based on what you knew at that time that the  
23 plaintiff, Mr. Davis, had a right to speak with the mayor about  
24 the proposed ordinance?

25 A. Yes, sir, I did.

1 Q. As a private citizen?

2 A. Yes, sir.

3 Q. As an off-duty employee?

4 A. Yes, sir.

5 Q. Now, do you know anything of the content of the conversation  
6 that the plaintiff had over the telephone with the mayor?

7 A. No, sir, I don't.

8 Q. Did he call you after having the conversation and report to  
9 you what was spoken about?

10 A. No, sir.

11 Q. Do you know of anyone else that the plaintiff may have  
12 spoken with after his conversation with the mayor?

13 A. No, sir.

14 Q. Did anyone come to you during the time period after he had  
15 spoken with the mayor but prior to his termination and tell you  
16 he had had a conversation?

17 A. I did hear through the department that he had had a  
18 conversation with the mayor.

19 Q. When did you hear that?

20 A. I believe it was the next shift that I worked.

21 Q. Do you recall when that shift occurred?

22 A. It was I want to say on a Wednesday. I'm not really sure.  
23 It was during the week.

24 Q. Do you recall whether that was before or after the city  
25 council had passed the ordinance?

1 A. It was after.

2 Q. And to your knowledge, did -- can you -- can you describe  
3 more specifically the conversation that you heard that the  
4 plaintiff had made a phone call?

5 A. All I heard was that he had made a phone call to the mayor  
6 and that he was called in to give a statement on it.

7 Q. During that time period and the time period of when you had  
8 received that voice mail from the plaintiff about the proposed  
9 ordinance and the time that he was eventually terminated, was  
10 that phone call a topic of -- a particular topic of conversation  
11 in the fire station?

12 A. No, sir.

13 Q. Do you know of any disharmony that it caused?

14 A. No, sir.

15 Q. Do you know of any interruption of fire department services  
16 that the plaintiff's phone call caused in the department?

17 A. No, sir.

18 Q. Do you know of any relationships that the plaintiff's phone  
19 call with the mayor jeopardized?

20 A. No, sir.

21 Q. At that time, did you believe that the plaintiff, Mr. Davis,  
22 had violated any rules by speaking to the mayor?

23 A. No, sir, I didn't.

24 MR. BROWN: That's all I have at this time, Your Honor.

25 THE COURT: All right. Let's take a break before

## 1 | cross-examination.

2 Members of the jury, I'll remind you not to let anybody  
3 talk to you about the case or in your presence. Don't talk to  
4 anybody else, including yourselves. And be back in the -- be in  
5 the jury room in time to start back at ten minutes after four.

6 (Jury out at 3:56 p.m.)

7 THE COURT: Court is in recess until 4:10.

8 (Recess at 3:56 p.m. until 4:13 p.m., at which time  
9 proceedings reconvened with the jury present, as follows:)

10 THE CLERK: Court is in session. You may be seated.

11 THE COURT: All right. Mr. McKoon, cross-examine.

## 12 CROSS-EXAMINATION

13 BY MR. MCKOON:

14 Q. Captain Land, I'm going to start off with this series of  
15 questions about you coming to my office and so on. Do you  
16 recall how that first came about; in other words, how it was  
17 that I was first notified that you might be called as a witness  
18 for the plaintiff in this case or as a witness in this case,  
19 period?

20 A. Yes, sir. I called Fire Chief Wallace Hunter to let him  
21 know that I was contacted by David's attorneys, that they wanted  
22 to speak to me. And he said that he would call you to let you  
23 know and that he would call me back.

24 Q. Okay. And do you recall whether Chief Hunter called you  
25 back or I called you back?

1 A. Chief Hunter called me back.

2 Q. All right. And then what happened next?

3 A. He told me that I needed to go to your office, that you were  
4 waiting on me.

5 Q. All right. And did Chief Hunter ever talk to you about your  
6 testimony in any way in this case?

7 A. No, sir.

8 Q. All right. And has he -- has he ever done that at any time?

9 A. No, sir.

10 Q. Has he ever tried to influence your testimony in this case?

11 A. No, sir.

12 Q. Have I ever tried to influence your testimony in this case?

13 A. No, sir.

14 Q. When you came down to my office, at that time you had not  
15 actually talked to the plaintiff's attorneys; is that correct?

16 A. That's correct.

17 Q. All right. And I don't know on which occasion, but when I  
18 first talked to you, do you recall me telling you that if you  
19 were called as a witness in this case by either side, that there  
20 would be absolutely no effect on your job whatsoever?

21 A. Yes, sir.

22 Q. And do you also recall me telling you that I would -- that  
23 I, Jim McKoon, would never do anything to jeopardize your career?

24 A. Yes, sir.

25 Q. In fact, I -- did I say something like lawsuits come and go,

1 but somebody's career is too important to get messed up over a  
2 lawsuit?

3 A. Yes, sir.

4 Q. Okay. Did I also tell you that I wouldn't ask you anything  
5 you didn't want to tell me about?

6 A. Yes, sir.

7 Q. At any time when you were talking to me, did -- and I  
8 understand how you say you felt now. But at any time while you  
9 were talking to me, did you ever say, Mr. McKoon, I'd just  
10 rather not talk to you about this?

11 A. No, sir, I didn't.

12 Q. Did the plaintiff's attorneys in this case ever ask you what  
13 questions I had asked you?

14 A. I advised them that you wanted to know if I had spoke with  
15 them.

16 Q. Okay. But did they ever ask you any of the questions that I  
17 had asked you?

18 A. They just asked me what I told them. I said what we had  
19 talked about. No, sir.

20 Q. That's what I'm saying. You told them what you and I talked  
21 about --

22 A. Yes, sir.

23 Q. -- is that correct?

24 A. Yes, sir.

25 Q. Just like you told me what you and they talked about --

1 A. Yes, sir.

2 Q. -- is that right? You were kind of caught in the middle  
3 here, weren't you?

4 A. Yes, sir.

5 Q. All right. Now, did I tell you that -- oh. Did I also say  
6 at any time -- did I ever ask you to say anything up here that  
7 would be untrue?

8 A. No, sir.

9 Q. In fact, did I emphasize to you that all I ever wanted you  
10 to do is tell the truth in this case?

11 A. Yes, sir.

12 Q. Is that right? With that all being said, let's now move on  
13 to your -- the case, okay?

14 A. Yes, sir.

15 Q. The -- back in 2005 when this incident took place about  
16 addressing the newspaper and all, did you -- at that time, what  
17 was your position in the department?

18 A. I was a sergeant.

19 Q. All right. And what did you -- what were your duties? What  
20 did you do?

21 A. Maintenance of the truck and driving the apparatus.

22 Q. Were you called a driver engineer --

23 A. Yes, sir.

24 Q. -- basically at that time? And you were one of the people  
25 in this group that was at a union meeting when there was a

1 reporter there; is that right?

2 A. Yes, sir.

3 Q. And one of the things I asked you about when you were at my  
4 office was this statement you had made, the one that Mr. Brown  
5 referred to a minute ago, this #10-E?

6 A. Yes, sir.

7 Q. Okay. And, you know, I didn't notice until today, but you  
8 said I was told that the chief knew the journalist was talking  
9 to other people in the department. Who told you that?

10 A. He did. The journalist.

11 Q. Chuck Williams?

12 A. Yes, sir.

13 Q. Okay. Did you ever confirm whether or not that was true?

14 A. No, sir, we didn't.

15 Q. Have you ever known a journalist to tell somebody something  
16 that was not true in order to get them to talk to them?

17 A. I've never been in that situation before.

18 Q. Okay. Was -- in 2005 when y'all had this meeting, was there  
19 a lot of, I guess, disgruntlement in the department?

20 A. Yes, sir.

21 Q. And how long had Chief Hunter been the chief at this time?

22 A. I'm not sure at this time.

23 Q. Well, if he had come in in, let's say, May of 2005, that  
24 would have made him the chief approximately six months by  
25 September; is that right?

1 A. Yes, sir.

2 Q. After he got there, did he start trying to make changes in  
3 the department?

4 MR. BROWN: Objection. Not within the scope of direct.

5 THE COURT: I think it's closely enough related to the  
6 direct. I overrule it.

7 Q. All I'm saying is did he make changes, start to make changes  
8 in the department?

9 A. It -- it's hard -- I mean --

10 MR. BROWN: Objection, Your Honor. Same objection.

11 MR. MCKOON: Okay. I'll tell you what, Judge. I'll go  
12 to another question.

13 THE COURT: All right. Go ahead.

14 Q. Let me just do this. When -- once the -- this meeting with  
15 the journalist took place and there was this article in the  
16 newspaper, were you called in and asked to sign a document  
17 something like this where it explained to you that you were in a  
18 paramilitary organization; if a firefighter has a grievance, it  
19 shall be presented in accordance with the routine grievance  
20 procedure? And then it goes on to say, it occurred to me some  
21 department members might not be as familiar as they should with  
22 the merit system rules. And then they said, these rules must be  
23 followed, and they were attached. Do you recall signing  
24 something like that?

25 A. Yes, sir.

1 Q. All right. And so no one received any discipline of any  
2 kind except signing a counseling form and signing one of these;  
3 is that right?

4 A. That's correct.

5 Q. And did you understand that the purpose of this was to  
6 inform people in the department, just in case they didn't know,  
7 what the rules exactly were?

8 A. Yes, sir.

9 Q. All right. And did you agree to do that and abide by the  
10 rules after that point?

11 A. Yes, sir.

12 Q. In your judgment, was the fact that you participated in this  
13 news thing, was it ever held against you in any way?

14 A. Not directly, no, sir.

15 Q. Okay. Well, in fact, you were promoted to captain at some  
16 point in time, weren't you?

17 A. Two years later. Yes, sir.

18 Q. All right. I mean did it stop you from getting promoted to  
19 captain, in your judgment?

20 A. No, sir.

21 Q. And what is your position currently in the department?

22 A. Administrative captain.

23 Q. And what do you do there as administrative captain?

24 A. I work directly for the fire chief and in fire prevention  
25 and training.

1 Q. What hours do you work?

2 A. Eight to five, Monday through Friday.

3 Q. Has Chief Hunter been fair with you?

4 A. Yes, sir.

5 Q. On another note, I believe that there was some testimony  
6 earlier about plaintiff's attorneys asking you about how things  
7 are going in the department now. Do you remember that?

8 A. Yes, sir.

9 MR. BROWN: Objection. I do not believe that  
10 information came in on direct examination. Not within the scope  
11 of direct examination.

12 THE COURT: I don't recall that either. Unless you can  
13 show me how that's relevant, I don't recall that being testified  
14 to.

15 MR. MCKOON: Well, all right. Let me --

16 THE COURT: I think she was asked about how -- how it  
17 was at the time then, but I'm not sure what she remembers. You  
18 can ask her.

19 Q. Let me ask it this way, I guess. Were you asked by the  
20 plaintiff's attorneys how things were going now?

21 A. I believe I was. Yes, sir.

22 Q. Okay. And what did you tell them?

23 A. Things are going well right now.

24 Q. All right. Are they much improved over what was happening  
25 in September of 2005?

1 A. Things are much better now. Yes, sir.

2 Q. Was there a lot of disruption and problems in the department  
3 at that time?

4 A. In 2005, yes, sir.

5 Q. Yes. And what about in early 2006? Had that changed any?

6 A. It was getting better.

7 Q. Okay. To what do you attribute that?

8 A. I believe a lot of it was the time that Chief Hunter had as  
9 the fire chief and with Chief Waters coming in.

10 Q. And when Chief Waters came in, did he institute some changes  
11 that helped the department, in your judgment?

12 A. Yes, sir.

13 Q. And did things begin to kind of straighten out at that point?

14 A. Yes, sir.

15 Q. And have they been pretty good since then?

16 A. Yes, sir.

17 Q. Much improved over what they were before?

18 A. Yes, sir.

19 Q. I believe you were asked on direct examination about whether  
20 or not you were for or against this probationary change. And I  
21 believe your answer was at that time, I was against it.

22 A. At that time, yes, sir.

23 Q. How do you feel about it now?

24 MR. BROWN: Objection. Relevance, Your Honor.

25 THE COURT: Well, she testified that based on the

1 information she had then, she was opposed to it. What would be  
2 the relevance of any change?

3 MR. MCKOON: Well, my feeling, Judge, is it just goes  
4 to the fact that it was a good idea.

5 THE COURT: I'll allow you to ask her if she has  
6 additional information to what she had then. She's testified as  
7 to what her opinion was then.

8 Q. Did you -- do you have additional information before you now  
9 about that probationary change that you didn't have at the time?

10 A. It was clarified of what the change was for.

11 Q. Okay. When did you get the clarification?

12 A. It was probably a couple months after, maybe a couple weeks  
13 to a month after it was passed.

14 Q. Prior to the change taking place, do you recall Chief Waters  
15 ever discussing it at any training meetings that this  
16 probation -- a change in the probationary period was going to be  
17 proposed or come about?

18 A. I heard talk about it. I didn't really think about it  
19 much. I mean it was -- it was -- I vaguely remember the  
20 conversations that were taking place at that time.

21 Q. Just a couple of other questions. As a firefighter, is it  
22 your duties -- one of your duties to be familiar with your  
23 standard operating procedures?

24 A. Yes, sir.

25 Q. And also with the merit system, if something comes up about

1 the merit system?

2 A. Yes, sir.

3 Q. And are those documents readily available to you? In other  
4 words, can you get hold of a standard operating procedure book  
5 pretty easily if you need to get hold of one?

6 A. We're issued one when we're hired.

7 Q. Okay. So you have one -- a personal book that you were  
8 given --

9 A. Yes, sir.

10 Q. -- with the procedures in it. And as far as the merit  
11 system, is one of those kept pretty much at each station?

12 A. It's in the battalion chief's office.

13 Q. So if you have a question about that, you can go to anybody  
14 above you and ask about it. Is that also correct?

15 A. Yes, sir.

16 Q. When you're in a firefighter position, are you a firefighter  
17 only when you're on duty?

18 MR. BROWN: Objection. Not within the scope of direct  
19 examination.

20 THE COURT: Sustained.

21 MR. MCKOON: That's all I have.

22 THE COURT: All right. Any redirect?

23 MR. BROWN: Yes, sir.

24

25

1

## REDIRECT EXAMINATION

2 BY MR. BROWN:

3 Q. Captain Land, defense counsel asked you who directed you to  
4 speak with him. And who gave you that directive?

5 A. Chief Hunter asked me to go to his office to speak to him.

6 Q. Is Chief Hunter in your chain of command?

7 A. Yes, sir. He's my immediate supervisor.

8 Q. Is Mr. McKoon in your chain of command?

9 A. Not that I'm aware of.

10 Q. So any assertions made by Mr. McKoon are not relevant to  
11 your particular job functions within the chain of command.

12 A. That's correct.

13 Q. Mr. McKoon mentioned a paramilitary organization. Do you  
14 recall that?

15 A. Yes, sir.

16 Q. What does that mean to you?

17 A. We operate like the military, but not as strict. We have  
18 guidelines.19 Q. Can you elaborate any further on what being in a  
20 paramilitary organization means to you?

21 A. No, sir.

22 Q. Okay. Do you believe by virtue of the fact that you are a  
23 member of a paramilitary organization that you have surrendered  
24 your off-duty speech by being a member of that organization?

25 A. No, sir.

1 MR. MCKOON: Object.

2 THE COURT: I'm sorry?

3 MR. MCKOON: I'm sorry. I object to the form of that  
4 question.

5 THE COURT: Yes. I sustain.

6 Q. Do you believe members of paramilitary organizations have  
7 First Amendment freedom of speech?

8 A. Yes, sir.

9 Q. And in your view, is that particularly important to off-duty  
10 speech?

11 A. Yes, sir.

12 Q. On matters of private concern?

13 A. Yes, sir.

14 Q. Mr. McKoon mentioned the present state of affairs or whether  
15 or not matters had improved in the department. Do you recall  
16 that line of questioning?

17 A. Yes, sir.

18 Q. Do you believe it's a plausible explanation that your  
19 participation in letting the public know about your concerns  
20 through that newspaper article could have, in fact, improved  
21 some things?

22 A. It's a possibility.

23 Q. And you had mentioned that -- or he asked you about the  
24 information that you had -- and I did as well -- at the time  
25 that you had to make this decision about the proposed ordinance

1 on probation. Do you recall that?

2 A. Yes, sir.

3 Q. And do you believe, notwithstanding, that  
4 you have a First Amendment right to speak on matters even if you  
5 don't have good information?

6 A. Yes, sir.

7 MR. BROWN: Thank you.

8 THE COURT: Any recross?

9 MR. MCKOON: I don't think so, Your Honor.

10 THE COURT: All right. You may come down, Captain  
11 Land.

12 May Captain Land be excused? May Captain Land be  
13 excused?

14 MR. BROWN: The plaintiffs excuse her, Your Honor.

15 MR. MCKOON: Yes. She's not under my subpoena.

16 You're the one that got her here.

17 THE COURT: All right. You're free to go, Captain  
18 Land.

19 Call your next witness.

20 MR. BROWN: Plaintiffs call William Pitts.

21 (Brief pause)

22 THE CLERK: Would you raise your right hand.

23 (The witness is sworn)

24 THE CLERK: Be seated.

25 THE COURT: All right. Mr. Brown.

1                           **WILLIAM MYRON PITTS, JR.**, the witness, having been  
2 duly sworn, testified, as follows:

3                           DIRECT EXAMINATION

4 BY MR. BROWN:

5 Q. Good afternoon.

6 A. Good afternoon.

7 Q. Please state your full name for the record.

8 A. William Myron Pitts, Jr.

9 Q. Mr. Pitts, where do you reside?

10 A. Salem, Alabama.

11 Q. What is your address there?

12 A. 686 Lee Road 439.

13 Q. And how long have you resided at that location?

14 A. About 13 years.

15 Q. Where did you attend high school?

16 A. Smiths Station High School.

17 Q. And what's your occupation, sir?

18 A. I'm a sergeant with the Phenix City Fire Department.

19 Q. And how long have you been employed at the fire department?

20 A. Eleven and a half -- ten and a half years.

21 Q. Mr. Pitts, are you here today by virtue of a subpoena that  
22 has compelled you to be here?

23 A. Yes, sir.

24 Q. Where did that subpoena issue from?

25 A. I actually got two subpoenas.

1 Q. From both parties in the lawsuit?

2 A. Yes, sir.

3 Q. Which subpoena did you receive first?

4 A. I guess y'all's. It got FedExed to me and everything.

5 Q. And I may refer somewhat in this line of questioning as the  
6 plaintiff. And just so you understand, the plaintiff is sitting  
7 to my right, Mr. Davis, and the defendants are the city.

8 A. Yes, sir.

9 Q. And did you at some point in time prior to receiving the  
10 subpoena from my office have an understanding that the plaintiff  
11 wanted you to provide testimony in this proceeding?

12 A. Yes, sir.

13 Q. And did you, subsequent to that, contact his counsel to seek  
14 advice about that matter?

15 A. About the -- talk to them?

16 Q. Yes.

17 A. When he -- when he -- Mr. Davis had told me about it and  
18 everything, I -- I contacted them, yes.

19 Q. And did we, after that point in time, begin to ascertain the  
20 facts that you knew about this case?

21 A. What about the facts, sir?

22 Q. The facts that you knew about Mr. Davis's lawsuit.

23 A. Yes, sir.

24 Q. And after that time, were you contacted by counsel for the  
25 defense?

1 A. Yes, sir.

2 Q. And what -- how did that occur?

3 A. We were in a class, in an incident command class at our  
4 training center. And Captain Land and myself were sitting in  
5 there, and they came to us and said that we needed to report to  
6 Mr. McKoon's office ASAP.

7 Q. What did you think at that time?

8 A. That we better get down there pretty quick.

9 Q. Did you consider that an order?

10 A. Yes, sir.

11 Q. And just to clarify the record, were you on duty?

12 A. Yes, sir.

13 Q. Did that upset or make you reluctant about matters?

14 A. Made me -- I was pretty nervous about it.

15 Q. Are you reluctant to be here today?

16 A. Yes, sir.

17 Q. Why?

18 A. I mean -- I mean it's -- I'm basically giving testimony  
19 against my employer, you know, and pretty nervous about it. I  
20 just -- I just am.

21 Q. When you were called down to the defense counsel's offices,  
22 what were you told?

23 A. He had seen Captain Land at first, and he just told me to  
24 kind of hang on for a second. And when I went in, he just told  
25 me that he had a few questions he wanted to ask me.

1 Q. What were those questions?

2 A. He was basically asking about a -- the ordinance that we  
3 were going through and everything at the time and, you know,  
4 what I could, you know, remember about it and stuff.

5 Q. Did you feel you had a choice as to whether or not you  
6 could -- could speak to the city's attorneys?

7 A. I mean, like I said, when we were asked down there and  
8 everything, when they -- to me, it's just the way it all went  
9 down, how we were supposed to go, that we were told that we  
10 needed to be there ASAP. And I basically thought if anything --  
11 if he asked questions, I was going to answer them to the best of  
12 my ability.

13 Q. Did you feel that you could have declined that invitation to  
14 go to the defense counsel's office?

15 A. No, sir. I mean just like I said, we weren't really asked.  
16 It was just -- we were told just to go down there and stuff.

17 Q. Were you ever told you didn't have to if you didn't want to?

18 A. No, sir. No, sir.

19 Q. Were you ever informed that you didn't have to speak to me  
20 if you didn't want to?

21 A. No, sir.

22 Q. Did you feel comfortable carrying out that order?

23 A. No, sir. I'm not really comfortable about anything.

24 Q. Was that the only occasion that you had an opportunity to  
25 visit with defense counsel on this case?

1 A. No, sir. I had to go back down there about an hour or so  
2 later -- well, give or take, you know, a few minutes. I had to  
3 go back down there.

4 Q. And what was the purpose of that?

5 A. Some of the things that Mr. McKoon and myself had talked  
6 about and everything, he -- it was a draft of a letter and  
7 everything. And he told me to read over it to make sure if this  
8 is basically what I was saying at the time. And that's what it  
9 was. It was to sign a document.

10 Q. Did you feel comfortable signing that document?

11 A. No, sir.

12 Q. Did you truly wish to sign that document?

13 A. No, sir.

14 Q. Why not?

15 A. I just -- I was kind of nervous at the time. You know what  
16 I mean? It's just -- I didn't really feel I had a choice to. I  
17 mean, like I said, I was nervous the first time I went down  
18 there. And the second time I had to go, I was even -- I didn't  
19 know -- really know what was going on. I was even, you know,  
20 more nervous the second time, the second time than the first  
21 time, because I didn't know if I had done something wrong the  
22 first time that I had to go back the second time.

23 Q. Did that make you even more reluctant to be a part of  
24 providing evidence in this lawsuit?

25 A. Yes, sir.

1 Q. Are you concerned about negative repercussions for  
2 participating in this lawsuit?

3 A. Yes, sir. Just like I said, it's just -- it's my employer.  
4 That's it.

5 Q. Well, let me switch gears a little bit with you and ask you  
6 about one particular event in this lawsuit. Do you recall in  
7 the spring of 2006 a proposed ordinance that was before city  
8 council relating to the probation period for merit system  
9 employees?

10 A. Yes, sir.

11 Q. And can you describe for me how you found out about that  
12 ordinance?

13 A. The -- the first time or the second time?

14 Q. The second.

15 A. The second time, I was at home. My wife was telling me  
16 about it. She knew about the first time we had it, and we were  
17 opposed to it. And she was reading in the newspaper that it was  
18 going to try to be passed again and everything, and so she  
19 called me and told me about it. So I read the article and  
20 everything, and that's how I found out about it.

21 Q. And did you do anything in particular after you found out  
22 about it?

23 A. Yes, sir. I called Mr. Davis.

24 Q. You called the plaintiff?

25 A. The plaintiff. Yes, sir. I'm sorry.

1 Q. Do you recall what day of the week that was on?

2 A. It was -- I believe it was a Sunday. Almost a hundred  
3 percent sure. Because my wife works basically, you know, five  
4 days a week -- or did at the time -- and she was off that  
5 Sunday. And that's how I knew.

6 Q. Do you recall whether or not -- or where the plaintiff was  
7 when you called him?

8 A. Yes, sir. He was at work.

9 Q. So he was at work at the firehouse.

10 A. Yes, sir.

11 Q. What did you tell him?

12 A. I just told him that there was -- the new ordinance coming  
13 up was in the paper again, that they were going to try to pass  
14 it. Basically, I just told him to look at the newspaper and  
15 that it was in there again and they were -- it was going to try  
16 to go through.

17 Q. Did y'all discuss it any further?

18 A. I talked to him the next day. I mean it was basically  
19 pretty short the first time I talked to him. And the next day,  
20 I talked to him again.

21 Q. And that was the -- on that Sunday, that was the very first  
22 time you had learned of this proposed ordinance.

23 A. Yes, sir.

24 Q. Were you aware that that ordinance had received a prior  
25 reading at city council?

1 A. The first time, it did receive one and it didn't get passed  
2 the first time. And that's why there was the second time.  
3 They -- it was going for -- I guess to be passed or whatever  
4 again.

5 Q. But on this second event, were you aware on that Sunday that  
6 that proposed ordinance had already received a first reading?

7 A. No, sir.

8 Q. Do you recall anything else about the conversation you had  
9 with the plaintiff on that Sunday?

10 A. No, sir. It was pretty -- pretty much just that it was back  
11 in the newspaper again.

12 Q. Now, if I heard you correctly, you said you also spoke with  
13 the plaintiff, Mr. Davis, the following day, on Monday.

14 A. Yes, sir.

15 Q. Can you tell me about that conversation?

16 A. It was basically -- we sat there, and he had found out what  
17 the ordinance was going to be about and everything. And for --  
18 we basically was just going to call members of our association  
19 to just let them know that the ordinance that had got -- that  
20 didn't pass the first time was back up again. And we just  
21 wanted to basically get their opinion on it and see if they were  
22 either for it or against it.

23 Q. Did you have any knowledge at that time that the plaintiff  
24 would contact any of your elected officials at Phenix City?

25 A. No, sir.

1 Q. Did you ask him to?

2 A. Did I ask him if he did or ask him to do it?

3 Q. Did you ask him to contact any of your elected officials?

4 A. No, sir. We were basically -- at that time, we were  
5 basically just contacting the members of our association.

6 Q. Did the plaintiff tell you he was going to call?

7 A. Call the --

8 Q. Any of your elected officials.

9 A. No, sir.

10 Q. On that Monday, did you voice any opinion about that  
11 proposed ordinance to the plaintiff, Mr. Davis?

12 A. No, sir. We -- like I said, we basically were sitting there  
13 talking about just calling our members and everything.

14 Q. What was -- what did you recommend to the plaintiff what he  
15 should tell the members?

16 A. That that -- that the same ordinance that we -- that we  
17 opposed the first time was back up again and that we needed to,  
18 I guess, you know, regroup and try to get it taken care of  
19 again.

20 Q. What do you mean by get it taken care of?

21 A. I mean try to -- try to not -- try not to get it passed, I  
22 guess. Just try to not let it go through.

23 Q. Were you in opposition, then, to that ordinance based on  
24 what you knew at that time?

25 A. Yes, sir.

1 Q. Do you recall being at any members -- or any meetings of the  
2 firefighters association where any of the city officials  
3 attended?

4 A. Yes, sir.

5 Q. Who were those city officials?

6 A. It was Mayor Hardin and Ray Bush.

7 Q. Did Mayor Hardin make any particular comments to the members  
8 of the association?

9 A. Yes, sir. He told us that he was basically there to take  
10 care of us. He knew of problems we had in the past with  
11 other, I guess, councils and stuff like that. He said he was  
12 there to take care of us and that if we ever needed anything  
13 from him, that we could contact him.

14 Q. Do you recall if he used the term that he had an open-door  
15 policy?

16 A. Yes, sir.

17 Q. Did he in fact use that term?

18 A. Yes, sir.

19 Q. What did that mean to you?

20 A. I mean that's pretty much self-explanatory. I mean open  
21 door is open door. You know, I mean that means you can go to  
22 him anytime you have a problem. You know what I mean?

23 Q. Did he indicate to anyone at that meeting that there was any  
24 procedural steps they needed to take prior to coming and walking  
25 through his open door?

1 A. No, sir.

2 Q. Did you feel that you had permission from him to utilize  
3 that open door?

4 A. Yes, sir.

5 Q. Did you feel that every other firefighter had that same  
6 right and permission?

7 A. Yes, sir.

8 Q. It was interpreted by you, his comments, as a blanket  
9 invitation?

10 A. Yes, sir.

11 Q. How many meetings do you recall that subject coming up by  
12 the mayor?

13 A. Two.

14 Q. Do you recall whether they were prior to his election or  
15 after his election?

16 A. I believe one was before the election and one was afterwards.

17 Q. Did you take him at his word?

18 A. Yes, sir.

19 Q. Either way.

20 A. Yes, sir.

21 Q. Let me go back to your testimony on the Monday that you  
22 called David Davis after learning about the proposed probation  
23 period. Based on your information that you had at that time,  
24 did you believe David Davis had permission to speak to the mayor  
25 about a proposed ordinance?

1 A. Yes, sir. I mean like we just said, I mean he told us we  
2 could -- you know, open-door policy, I mean, he said, if we ever  
3 had anything. Because basically, the things of the past, he  
4 told us yes.

5 Q. Did Mr. Davis --

6 MR. BROWN: Strike that or I'll withdraw that.

7 Q. Did you eventually learn that Mr. Davis had been terminated  
8 from the fire department?

9 A. Sir?

10 Q. I said did you eventually learn that Mr. Davis, the  
11 plaintiff, had been terminated from the fire department?

12 A. Yes, sir.

13 Q. Okay. I want to focus you on that period of time between  
14 your Monday conversation with Mr. Davis about the probation  
15 period and the time you learned of his termination. And do you  
16 know about when it was you learned of his termination?

17 A. In adjacent to the time of the phone call that Monday?

18 Q. Yes.

19 A. No, sir, I don't recall. I don't -- I mean it -- I don't  
20 think it was long after, but I really don't remember. You know,  
21 week or whatever. I just know pretty close.

22 Q. Did you -- excuse me. I'm sorry.

23 A. That's all right.

24 Q. I want you to finish. I'm sorry. Did you and Mr. Davis  
25 have any discussions after that Monday prior to his termination?

1 A. After his termination?

2 Q. No. After your Monday discussion with him and prior to his  
3 termination.

4 A. No, sir.

5 Q. So that matter didn't come up, then.

6 A. No, sir.

7 Q. Was it discussed with anyone else in the fire station, that  
8 probation ordinance?

9 A. No, sir. Like I said, what I personally did myself is I  
10 contacted our members on the telephone.

11 Q. But do you know of any disharmony that -- the telephone  
12 conversation the plaintiff made to the mayor, that it caused in  
13 the firehouse?

14 A. No, sir.

15 Q. Was it discussed?

16 A. No, sir.

17 Q. Did -- to your knowledge, did it impede any other department  
18 operations during that time frame?

19 A. No, sir.

20 Q. Did it -- in your view, do you know of any relationships it  
21 jeopardized as a result of that conversation?

22 A. No, sir.

23 Q. Was it an issue?

24 A. No, sir.

25 Q. And just to clarify the record, did -- at that time, during

1 that time period, did you believe -- or did you oppose that  
2 probation period?

3 A. At that time, yes, sir, I did.

4 MR. BROWN: Okay. Your Honor, I'd like permission to  
5 approach the witness and show him an exhibit.

6 THE COURT: Oh, yes. All right. Go ahead.

7 MR. MCKOON: I know what it is.

8 MR. BROWN: And Your Honor, these are not in the  
9 exhibit books because we just received this yesterday.

10 Q. Mr. Pitts, I would like to show you what we have marked as  
11 Plaintiff's Exhibit #30. Can you identify that document?

12 A. Yes, sir.

13 Q. What is it?

14 A. It's the letter that Mr. McKoon's office had drafted up when  
15 I went back to -- after the first meeting we had, the document  
16 that I needed to sign was this one right here.

17 Q. And was this the document you referred to -- I'm sorry.

18 MR. BROWN: Your Honor, permission to give the clerk  
19 the original.

20 THE COURT: Go ahead.

21 Q. Was this the document that you referred to earlier in your  
22 testimony as signing with some anxiety?

23 A. Yes, sir.

24 Q. And now, you have testified in court today that you were  
25 opposed to the probation period at that time based on what you

1 knew; is that correct?

2 A. Yes, sir.

3 Q. Okay. I would like to -- for you to direct your attention  
4 to the second paragraph in this Plaintiff's Exhibit #30. And  
5 let me -- let me read it, if you don't mind, okay?

6 Mr. McKoon asked me about a change in the probation period  
7 for firefighters. I told him that the issue had come up on two  
8 separate occasions. I told him that on the first occasion, I  
9 was opposed to the change of the probationary period from 12 to  
10 18 months because in addition to new hires, it included a new  
11 probationary period each time a firefighter was promoted within  
12 the department. That proposal was never implemented. I told  
13 him that the matter came up again. And on the second occasion,  
14 it was my understanding that the extension of the probationary  
15 period from 12 to 18 months only applied to new hires. Since  
16 this did not concern me, I had no opposition to this change.  
17 Also, I felt it might help some new hires to complete their  
18 necessary certifications. I do not remember any union meeting  
19 or anyone calling me about the second occasion involving the  
20 change in the probation period from 12 to 18 months as it  
21 applied to new hires.

22 Is that a true and accurate reflection of what that document  
23 states, sir?

24 A. No, sir.

25 Q. Well, is this the document or is it an accurate copy of the

1 document that you signed in Mr. McKoon's office?

2 A. Yes, sir.

3 MR. BROWN: Your Honor, we'd move exhibit --  
4 Plaintiff's Exhibit #30 into the record.

5 THE COURT: It's admitted.

6 Q. Okay. Now, Mr. Pitts, I want to give you a chance to  
7 clarify some things. You've stated in open court that you were  
8 opposed to the probation period.

9 A. Yes, sir.

10 Q. And can you tell me on what day you signed this document?

11 A. The 27th of February.

12 Q. Last week.

13 A. Yes, sir.

14 Q. And this was at defense counsel's office.

15 A. Yes, sir.

16 Q. Does this reflect your true beliefs about the events of the  
17 probation period in the spring of 2006?

18 A. No, sir.

19 Q. Why does it not?

20 A. Why does it not -- when -- at that time?

21 Q. Uh-huh.

22 A. I mean because at the time -- the probationary period at the  
23 time, we were feeling that it might have something to do with  
24 people being hired. It doesn't allow some people to, you know,  
25 have part-time jobs. I mean it's just -- we had the reasons for

1 it, but we were -- we were just against it at the time because  
2 we didn't know what it was going to be about. I mean, like I  
3 said, I don't know if it was a year or six months or how much  
4 prior it was to the first one, but we opposed the first one.  
5 And it was the same thing with this one right here. I don't  
6 know if it was this one they were trying to -- it was also  
7 including people who were having disciplinary problems and  
8 stuff, and they wanted to put them back on probation again. I  
9 believe that's what it was. But I really -- like I said, I  
10 didn't remember at the time of it.

11 Q. Can you explain to me especially the sentence that says  
12 since it did not concern me -- speaking of this probation  
13 period -- I had no opposition to this change? Would you agree  
14 that contradicts your testimony of today?

15 A. Yes, sir.

16 Q. Why? Did you read this document before you signed it?

17 A. Yes, sir.

18 Q. Did you feel pressured to sign this document?

19 A. I basically wanted to get in and out. You know what I mean?

20 Q. Let me ask you this. Do you understand the significance of  
21 an affidavit?

22 A. No, sir.

23 Q. Do you know that an affidavit is a sworn statement?

24 A. No, sir, I didn't.

25 Q. Do you know what it means to be a sworn statement?

1 A. I mean basically, it's like when I swore to get up here. I  
2 just -- I just didn't raise my hand or anything. I just was  
3 asked if this was accurate, and that was it.

4 Q. Have you --

5 A. If it was accurate to what we had talked about earlier.

6 Q. I'm sorry. I -- I want you to explain this document. Your  
7 last statement confuses me. I want to know, is the testimony  
8 that you have given here in open court today your true and  
9 accurate testimony?

10 A. Yes, sir.

11 Q. Do you understand that you have given an oath today to tell  
12 the truth, the whole truth --

13 A. Yes, sir.

14 Q. -- and all the truth?

15 A. Yes, sir.

16 Q. And that is the truth, as you've known it today?

17 A. Yes, sir.

18 Q. And not reflected in this document.

19 A. Yes, sir.

20 MR. BROWN: Thank you, sir.

21 THE COURT: All right. Mr. McKoon, cross-examine.

22 CROSS-EXAMINATION

23 BY MR. MCKOON:

24 Q. Mr. Pitts, when you were in my office, did you feel like I  
25 was fair with you?

1 A. Yes, sir.

2 Q. Do you feel like I'm a crook?

3 A. No, sir.

4 MR. BROWN: Objection, Your Honor. Not within the  
5 scope of direct.

6 THE COURT: It's already answered. Go ahead.

7 Q. When you came down to my office, Mr. Pitts, did I tell you  
8 that if there was anything you didn't want to talk to me about,  
9 you didn't have to talk to me about it?

10 A. Yes, sir.

11 Q. And did I ever ask to you do anything except tell the truth?

12 A. No, sir.

13 Q. And when you sat in my office and I asked you about this  
14 probationary period when you were first there, do you recall  
15 telling me that, Mr. McKoon, I'll tell you the truth. I'm the  
16 kind of guy that if something doesn't concern me, I'm not  
17 concerned with it. And when I found out it applied to new  
18 hires, it didn't make any difference to me. Do you remember  
19 saying that?

20 A. Yes, sir.

21 Q. And is that what you told me?

22 A. At that time, it was. Yes, sir.

23 Q. Okay. And did you also tell me that, actually, you thought  
24 it was a good thing because it allowed people extra time to  
25 complete their certifications?

1 A. I told you -- yes, I told you it was a good thing. But I  
2 was speaking of the present time, right now it was a good thing.  
3 Q. Well, did you -- well, let me talk about that just a little  
4 bit. And I'm not going to mince words with you about that, but  
5 I will ask you this. Did you say that you thought it was kind  
6 of silly about this -- you having to have this EMT license  
7 anyway; that actually, when you're a first responder, you were  
8 kind of trained like that; but since they were requiring it,  
9 sometimes people needed to take it once or twice before they  
10 could complete it? Do you remember something like that being  
11 said?

12 MR. BROWN: Objection. Not within the scope of direct  
13 examination, Your Honor.

14 MR. MCKOON: It's about this affidavit, Your Honor.

15 THE COURT: Overruled. Go ahead.

16 Q. And then after you told me what you did, at first I told  
17 you, I said, now, Mr. Pitts, I'm just going to let you look me  
18 in the eye and tell me, if you come to court, are you going to  
19 tell me the same thing in court that you're telling me today?  
20 Do you remember me saying that to you?

21 A. I remember you asking -- I remember you asking me if I'm  
22 going to tell the truth. And I told you I'm going to tell the  
23 truth, help or hurt anybody. I'm going to tell the truth.

24 Q. All right. And that's all I ever asked you to do, wasn't  
25 it?

1 A. Yes, sir.

2 Q. All right. Do you remember me also saying that whatever you  
3 said in court wasn't going to affect your career one way or the  
4 other, that careers were too important and that court cases come  
5 and go, and that I had had lots of court cases --

6 A. Yes, sir.

7 Q. -- and I didn't want to hurt anybody's career? Do you  
8 remember me telling you that?

9 A. Yes, sir.

10 Q. Did you believe me, Mr. Pitts, when I told you that?

11 A. Yes, sir.

12 Q. Well, you can believe it. Let me tell you -- or ask you  
13 another thing. Are you the secretary-treasurer of the union?

14 A. Yes, sir.

15 MR. BROWN: Objection.

16 MR. MCKOON: He asked him all about his union  
17 membership.

18 THE COURT: Overruled. Go ahead.

19 Q. And do you still hold that position today?

20 A. Yes, sir.

21 Q. And when you -- what was your position in regard to  
22 Mr. Davis sitting right here? Was there a vice president  
23 between you and him, or were you pretty much -- y'all were  
24 pretty close in the union?

25 A. Yes, sir.

1 Q. You were pretty close in the union?

2 A. I mean we were -- what do you mean by pretty close?

3 Q. Well, I mean he was the president and you were the  
4 secretary-treasurer, right?

5 A. Oh, yes, sir. Yes, sir. Yes, sir.

6 Q. Your responsibility was I guess to keep up with the money if  
7 there was any money to come in and keep up with the bylaws and  
8 things, right?

9 A. Yes, sir.

10 Q. Did you also keep up with the minutes?

11 A. When we had meetings, yes.

12 Q. Who has those, the minutes and the bylaws?

13 A. The --

14 Q. Of the local union. Who has those documents?

15 A. They will be -- I have them in a folder in my attic at the  
16 house.

17 Q. I'm sorry?

18 A. I have them in a folder in the attic of my house.

19 Q. Do you know Mr. Malone seated out here?

20 A. Do I know him?

21 Q. Yes, sir.

22 A. Yes, sir, I've met him before.

23 Q. And what is his position?

24 A. I think he's -- I know he represents the association in the  
25 Southeast, but don't know the area or anything that he

1 represents them at. I just know a couple states or something.

2 Q. All right. Now, getting back to this affidavit, would it be  
3 fair to say that when I typed this affidavit up, I typed it up  
4 based on the information you gave me at that time?

5 A. Yes, sir.

6 Q. And when you came back down to the office, to my office, you  
7 actually came into my office, my little office, not the little  
8 conference room I've got back there in the back; is that right?

9 A. Yes, sir.

10 Q. And I gave it to you. And I said, now, Bill, I want you to  
11 take your time and read this --

12 MR. MCKOON: I'm sorry, Judge. I mean that's what I  
13 said.

14 Q. -- and if there's any changes you want to make, change it.  
15 Do you remember that?

16 A. Yes, sir.

17 Q. And did I ever say anything in voice or in manner that --  
18 that would make you think you were under some sort of threat to  
19 sign this?

20 A. No, sir.

21 Q. And did you take it and read it just like you wanted -- take  
22 all the time you wanted to?

23 A. Yes, sir.

24 Q. And did you sign it?

25 A. Yes, sir.

1 Q. And my secretary was coming in about the time you were  
2 signing it, and I -- do you remember me saying hold up just a  
3 minute, because I wanted her to see you sign it? Do you  
4 remember that?

5 A. Yes, sir.

6 Q. Because she was going to be the notary.

7 A. Yes, sir.

8 Q. And then when she came in, you were just about through. And  
9 I said, would you tell her that's your signature? Do you  
10 remember that, all that happening?

11 A. Yes, sir.

12 Q. All right. And then as you were about to leave, you said,  
13 man, I hope this is the end of this. I hope I don't have to go  
14 to court.

15 A. Yeah.

16 Q. Do you remember that?

17 A. Yes, sir.

18 Q. All right. And I said, well, maybe you won't have to. Do  
19 you remember me saying that?

20 A. Yes, sir.

21 Q. So you're kind of stuck in the middle here, aren't you?

22 A. Just here to tell the truth.

23 Q. I understand. Well, the problem that we have now is we have  
24 an affidavit, of course, that says one thing; and then we now  
25 have some testimony in the court here that says another thing.

1 A. Yes, sir.

2 Q. And I'm not trying to get on to you about it. All I'm  
3 trying to find out is why would you have signed this affidavit  
4 and told me what you told me if it turned out -- if it turns out  
5 it's not the truth?

6 A. A lot of times, Mr. McKoon, when we were in that meeting and  
7 everything, you know, some of the times when we were in  
8 discussion and stuff, I -- you know, a lot of times I told you I  
9 really don't recall or I don't remember. And it was hard for me  
10 to. But after -- after our meeting, I sat there and thought  
11 about it hot and heavy for -- for the rest of the time at work.  
12 I went home the next morning and even, you know, talked to my  
13 wife and finally realized what the second one was actually  
14 about. At the time, you know, when I was in your office and  
15 everything --

16 Q. Right.

17 A. -- and I signed this, at the time, that's what I thought  
18 was -- the second ordinance was about, but it wasn't. It was  
19 like I told you. It was such a long time ago, I couldn't  
20 remember.

21 Q. So what you're saying is you just made a mistake when you  
22 signed this.

23 A. Basically.

24 Q. Is that right?

25 A. Yes, sir. I apologize.

1 Q. The fact that Mr. Davis was the union president and  
2 Mr. Malone is sitting here today, does that make you feel any  
3 pressure?

4 A. No, sir.

5 Q. The fact that Chief Hunter is sitting here today, does that  
6 make you feel any pressure?

7 A. Just like I stated earlier, I'm just nervous because it's my  
8 employers. You know what I mean? It's just -- and that should  
9 be understandable.

10 Q. But the fact that the union is involved doesn't have  
11 anything do with it?

12 A. No, sir.

13 Q. And that doesn't have anything to do with your changing your  
14 affidavit -- your testimony today?

15 A. Not a bit.

16 MR. MCKOON: I appreciate you coming. Thank you.

17 THE WITNESS: Yes, sir.

18 THE COURT: Any redirect, Mr. Brown?

19 MR. BROWN: Just a couple of questions.

20 REDIRECT EXAMINATION

21 BY MR. BROWN:

22 Q. Who was it that directed you to go to defense counsel's  
23 office and speak with them?

24 A. When we were in the class that day?

25 Q. Yes, sir.

1 A. I don't know if it was Captain Land, but I remember somebody  
2 saying that you and Anne need to go to the defense attorney's  
3 office.

4 Q. Was it someone in your chain of command?

5 A. I really don't remember. It might have been Chief Hanson.  
6 He was in the class that day, but I really don't remember.

7 Q. I believe you used the term they told you to report ASAP?

8 A. Yes, sir.

9 Q. What's that mean?

10 A. As soon as possible.

11 Q. And did you comply with that?

12 A. Yes, sir.

13 Q. Did you feel you had a choice about complying?

14 A. No, sir. They asked us to go down there right then, and  
15 that's what we did.

16 Q. Is Mr. McKoon in your chain of command at the fire  
17 department?

18 MR. MCKOON: Judge, that's all been asked and answered  
19 one time before.

20 THE COURT: Yes, it has been asked and answered. I'll  
21 sustain. Limit yourself to subjects that came up on cross and  
22 that haven't already been testified to.

23 MR. BROWN: I have no further questions, Your Honor.

24 THE COURT: May he be excused?

25 MR. BROWN: Yes, sir, Your Honor.

1                   MR. MCKOON: I may recall him later. He's under a  
2 subpoena by both sides.

3                   THE COURT: But you don't need him to stay in the  
4 courthouse.

5                   MR. MCKOON: No, sir, not today.

6                   THE COURT: All right. Sergeant Pitts, you're excused  
7 subject to being recalled. You don't have to stay down here.  
8 They'll call you if they need you again.

9                   THE WITNESS: So I can go today?

10                  THE COURT: You can go today. Just stay available in  
11 case somebody needs to get up with you.

12                  THE WITNESS: Okay. I mean so do I need to show up  
13 here tomorrow or anything?

14                  THE COURT: No.

15                  THE WITNESS: Okay. I'll be by phone or anything.

16                  THE COURT: That's right.

17                  THE WITNESS: Okay. Thank you, sir.

18                  THE COURT: Call your next witness.

19                  MR. BROWN: Plaintiffs call Mr. Karl Taylorson.

20                  (Brief pause)

21                  THE CLERK: Would you raise your right hand.

22                  (The witness is sworn)

23                  THE CLERK: You may be seated.

24                  **KARL TAYLORSON**, the witness, having been duly sworn,  
25 testified, as follows:

1

## DIRECT EXAMINATION

2 BY MR. BROWN:

3 Q. Mr. Taylorson, would you state your full name for the  
4 record, please.

5 A. Karl Taylorson.

6 Q. And where do you reside, Mr. Taylorson?

7 A. 625 Oswichee Road in Seale.

8 Q. And how long have you lived at your present address?

9 A. It's been my home of record since I was 14. I built a home  
10 next to my parents about six years ago.

11 Q. And who is your employer, sir?

12 A. Phenix City Fire Rescue, Fire Department, City of Phenix  
13 City.14 Q. And what job classification do you hold in the fire  
15 department?

16 A. I'm a captain in the fire department.

17 Q. And who is your direct supervisor in the fire department?

18 A. Battalion Chief Bill Zuker.

19 Q. Excuse me?

20 A. Bill Zuker.

21 Q. Captain Taylorson, did you receive a subpoena compelling  
22 your appearance for testimony today?

23 A. Yes, sir, I did.

24 Q. And who issued that subpoena to you, sir?

25 A. You-all (indicating).

1 Q. Okay. I may ask you a line of questions that I will use the  
2 term the plaintiff, and I want you to understand who is to my  
3 right, Mr. Davis, and the defendants are the city. Were you  
4 made aware at some point in time that the plaintiff desired your  
5 testimony in this proceeding?

6 A. Yes, sir.

7 Q. And after that time, did you seek or communicate with me  
8 concerning your testimony? Did you make --

9 A. Yes, sir, I did.

10 Q. Okay. And what did we discuss?

11 A. We discussed the meeting with the mayor, which was Captain  
12 Boatner's retirement party. We discussed the newspaper article  
13 meeting. And I'm sure there were several other things that  
14 you -- that you'll bring up here.

15 Q. And did you express to me a reluctance to give testimony in  
16 this --

17 A. Absolutely. I don't think anyone wants to be here.

18 Q. What's the basis of that?

19 A. No matter -- no matter what you say in here -- everyone's  
20 sworn to tell you the truth, but you -- you worry because of --  
21 we -- I work for the City of Phenix City. No matter what I say  
22 in here, it's not going to -- it can't bode well for me. I mean  
23 you just -- you worry. You worry. I'm a single father with  
24 three children, and I've got bills to pay. And, you know, you  
25 just can't help but worry about those kind of things.

1 Q. Notwithstanding those concerns, you've taken an oath,  
2 though --

3 A. Absolutely.

4 Q. -- to be as honest as you can.

5 A. Yes, sir. Yes, sir.

6 Q. After you and I discussed the factual material you knew  
7 about the case, were you contacted by the defendants' attorney?

8 A. Yes, sir. I called him myself.

9 Q. Okay. Why?

10 A. The -- I tried to follow proper procedures. I contacted my  
11 chief, as I was supposed to, and he advised me to contact the  
12 city attorney.

13 Q. And what happened next?

14 A. He asked me various questions prior to my talking with you  
15 to see if I had any -- any other knowledge. And basically, it's  
16 exactly what -- it is absolutely exactly what I had talked to  
17 you about. And after that conversation, I spoke with you about  
18 two or three nights later.

19 Q. Were you told that you didn't have to speak to me?

20 A. Yes, sir, I was.

21 Q. Were you instructed at that time that you didn't have to  
22 speak to the city?

23 A. No, sir.

24 Q. Did you subsequently have communication with defense counsel  
25 concerning this case?

1 A. After I spoke with you, I spoke to him on one -- one other  
2 occasion. Yes, sir.

3 Q. How did that communication occur?

4 A. I was at station four, and Mr. McKoon called for me.

5 Q. Were you on duty?

6 A. Yes, sir, I was.

7 Q. Did you have any choice as to whether or not you could speak  
8 with him?

9 A. No, I wouldn't think so.

10 Q. Did you consider it an obligation on your job to speak with  
11 him?

12 A. Yes, sir.

13 Q. Did you believe at that time that if you didn't want to  
14 speak to him, you could be subject to discipline?

15 A. I felt like it was in my best interests to speak with him.

16 Q. Did it make you further reluctant to provide testimony in  
17 this case?

18 A. Yes, sir. Absolutely.

19 Q. What was discussed in that communication with counsel for  
20 the city?

21 A. What we discussed. Basically, that the mayor stated that he  
22 has an open-door policy at the retirement party for Captain  
23 Boatner. He asked me a question about Chief Kennedy that I was  
24 not aware of. I -- I was -- didn't have any knowledge on or did  
25 not know. We basically covered what we had discussed.

1 Q. Did he -- were you asked what we had discussed?

2 A. Yes, sir.

3 Q. You just made reference to an open-door policy.

4 A. Yes, sir.

5 Q. Did you ever attend meetings of the firefighters  
6 association?

7 A. Yes, sir, I did.

8 Q. Are you a member of the firefighters association?

9 A. Yes, sir, I am.

10 Q. And at any of those meetings, did elected officials  
11 appear --

12 A. Yes, sir.

13 Q. -- before you? Did they address the meeting of the  
14 firefighters?

15 A. Yes, sir, they did.

16 Q. And who were those elected officials?

17 A. Our current mayor and Council Member Bush, Ray Bush.

18 Q. And how many meetings do you recall that, first of all, the  
19 mayor attended?

20 A. I remember them being at at least two separate meetings.

21 Q. Do you recall when those meetings might have been?

22 A. No, sir, not specifically. I do not.

23 Q. Let me try to ask you to place it in the frame of reference  
24 of the mayor's election. Do you recall if he appeared at the  
25 firefighters association prior to his election?

1 A. I can tell you he was at Captain Boatner's retirement  
2 party. If Captain Boatner's retirement party was prior to his  
3 election, then it was prior. If it was after, then it was  
4 after. I don't know specifically, to be honest with you.

5 Q. What was the comment that he made at -- you just said you  
6 remembered seeing him at Captain Boatner's retirement party. Do  
7 you remember any comments in particular the mayor made?

8 A. He said he had an open-door policy and that he would -- he  
9 would look out for us, because Captain Boatner told him to be  
10 sure and look out for us.

11 Q. What did that mean to you?

12 A. With Captain Boatner leaving, he was -- Captain Boatner was  
13 a fine, fine captain at the fire department. With him leaving,  
14 I'm sure, as if -- if I were to leave, I would -- I would want  
15 someone to look out for the men while I'm gone. And he  
16 basically left us in the mayor's hands, feeling that he was  
17 capable, someone who could get things done and look out for us.

18 Q. What did the mayor's comment about an open-door policy mean  
19 to you?

20 A. It meant that we could go to him with -- with problems.

21 Q. Did you ever take him up on that offer?

22 A. No, sir. If I saw him out and about -- I've seen him in  
23 public -- I'd speak with him. But, you know, only in passing  
24 and in common things.

25 Q. Did the mayor at that time provide any further instruction

1 that any firefighter needed to follow to use his open door?

2 A. No, sir.

3 Q. Did he instruct that you were to get approval from anyone?

4 A. No, sir.

5 Q. Did you believe you needed to, to use his open door?

6 A. Now or -- now or then?

7 Q. When he made this statement.

8 A. He told us that we could come to him with any problems that  
9 we had.

10 Q. You referenced another elected official as having  
11 attended --

12 A. Yes, sir.

13 Q. -- at least one meeting?

14 A. He was at at least two that I know of.

15 Q. Okay. And who was that, again?

16 A. Ray Bush.

17 Q. And what position does Mr. Bush hold?

18 A. He's council member.

19 Q. Did Mr. Bush make any particular comments to the members of  
20 the association?

21 A. I -- I don't recall specifically. No, I do not. He did  
22 speak with us; but very positively, I don't recall.

23 Q. Were you -- were you made aware sometime during the spring  
24 of 2006 that the city was considering -- or the -- pardon me --  
25 the council was considering an ordinance to change the probation

1 period for certain city employees?

2 A. Yes, sir.

3 Q. What did you understand about that at that time?

4 A. At that time, we were under the understanding that the  
5 probation would go from one year's time, which was what it was  
6 at the time -- it would be extended to a year and a half, which  
7 is 18 months.

8 Q. What was the significance of that to you?

9 A. To me, it -- at the time, it did not -- we -- we felt  
10 threatened by it. It seemed -- it did not seem positive at the  
11 time.

12 Q. Why?

13 A. It's hard to say. It -- I don't know. I don't know how to  
14 put it.

15 Q. What particular reason, if you can name one, did you believe  
16 it wasn't good at the time?

17 A. You're looking at extending the probation period for your  
18 personnel to where you can be let go within that time, which  
19 is -- which is -- can be a very absolute, positive, good thing  
20 if you need to get rid of people. But at the time, we -- we  
21 felt -- I felt -- we felt threatened by it, threatened by it.

22 Q. Do you recall when you first became aware that the city  
23 council was considering that ordinance?

24 A. Sergeant Davis approached me with it and discussed it with  
25 me.

1 Q. Do you -- how did he communicate with you?

2 A. He explained what he knew of the ordinance and wanted my  
3 input on it.

4 Q. Can you tell me whether or not that was a telephone call or  
5 a personal visit?

6 A. I believe -- I believe it was a phone call. I believe it  
7 was a phone call.

8 Q. Do you recall whether or not that was prior to the city  
9 council acting on that ordinance?

10 A. Yes, sir. It was prior.

11 Q. And did you express an opinion to him during that  
12 conversation about what you understood or what you thought about  
13 that policy?

14 A. At the time, I did not think it was a good thing.

15 Q. And did he express an opinion to you about the policy?

16 A. At the time, he was not for it.

17 Q. So you agreed --

18 A. Yes, sir. I agreed.

19 Q. -- with the plaintiff, Mr. Davis --

20 A. Yes, sir.

21 Q. -- at that time --

22 A. Yes, sir.

23 Q. -- that you didn't want it to be there.

24 A. Yes, sir.

25 Q. Did you believe that based on those statements made by the

1 mayor of Phenix City in your association meeting that Mr. Davis  
2 had a right to speak to the mayor and express his views on that  
3 ordinance?

4 A. Yes, sir.

5 Q. Why?

6 MR. MCKOON: Judge, I'm going to object --

7 A. He told us --

8 MR. MCKOON: -- to what he believes about it. It  
9 doesn't have any relevance to this matter.

10 THE COURT: Yes. I sustain as to why he believes  
11 somebody else had a right to do something. Sustained.

12 Q. Do you recall if Mr. Davis contacted you in the time period  
13 after the ordinance was passed?

14 A. I don't recall.

15 Q. You don't know whether he called you or not?

16 A. No. No, sir.

17 Q. Did anyone else speak with you or call you about the  
18 ordinance at that time?

19 A. No, sir.

20 Q. And at some time after your discussion with Mr. Davis about  
21 the ordinance, did you learn he had been terminated from the  
22 fire department?

23 A. Yes, sir.

24 Q. Do you know about when you found that out?

25 A. It was sometime after his termination.

1 Q. Was it within a few days?

2 A. It was within a few days. Yes, sir.

3 Q. If I could focus your attention to that time period between  
4 the conversation you had with Mr. Davis, the last one before his  
5 termination, and the time you learned of his termination, did  
6 you view the issue of this proposed ordinance as disruptive to  
7 the department?

8 A. No, sir.

9 Q. Was it being discussed in your presence?

10 A. No, sir.

11 Q. While you were on duty?

12 A. No, sir.

13 Q. Did anyone call you at home and explain to you or say to you  
14 they didn't -- they had an opinion about it?

15 A. No, sir.

16 Q. It just wasn't discussed.

17 A. No.

18 Q. Do you know of any operation of the fire department that was  
19 impeded or obstructed in any way because of his phone call to  
20 the mayor?

21 A. Not at all.

22 Q. Do you know of any relationships that it put in jeopardy  
23 because he made a phone call to the mayor?

24 A. None whatsoever.

25 Q. Mr. Taylorson, do you recall a meeting of the association in

1 the fall of 2005 wherein a journalist attended?

2 A. Yes, sir.

3 Q. And do you recall who that journalist was?

4 A. I -- the only way I could tell you is if I was to read the  
5 article.

6 Q. Did you attend that meeting where --

7 A. Yes, sir.

8 Q. -- the journalist was there?

9 A. Yes, sir, I did.

10 Q. And did that meeting -- did the journalist subsequently  
11 write an article that appeared in the newspaper?

12 A. Yes, sir, he did.

13 Q. Okay. At that time, did you believe you had a right to  
14 speak to a member of the media off duty?

15 A. It was kind of gray at the time. I -- we did not -- we were  
16 not told that we could not.

17 Q. Were you off duty at the time you attended that meeting of  
18 the association?

19 A. Yes, sir.

20 Q. After that meeting, did you receive any communications from  
21 the department about attending the meeting?

22 A. Yes, sir.

23 Q. What kind of communications did you receive?

24 A. It was basically explaining to us that we were not to talk  
25 to the paper like that. And it was -- I believe there's an SOP

1 on it that was brought to our attention.

2 Q. Did you receive any disciplinary action for having contacted  
3 the media?

4 A. No, sir.

5 Q. I'd like for you to open the binder in front of you, if you  
6 don't mind, Captain Taylorson, and turn it to tab -- I believe  
7 it's #29.

8 A. Yes, sir.

9 Q. I ask, can you identify that document?

10 A. I do not -- I don't recall seeing this.

11 Q. Do you recall if you've ever seen that document?

12 A. I don't recall seeing this. No.

13 Q. Okay. Well, let me ask you this. Do you recall a  
14 counseling session that one of the assistant chiefs had with you  
15 concerning the -- concerning that article that appeared --

16 A. A personal counseling session? No. And I may have. It's  
17 been quite some time.

18 Q. Do you recall having a meeting with one of the assistant  
19 chiefs concerning the recent newspaper article in the *Columbus*  
20 *Ledger-Enquirer*? I want to make sure --

21 A. No, sir.

22 Q. Does your tab have Exhibit #29 at the bottom of it? I want  
23 to make sure we're reading on the same --

24 A. Yes, sir.

25 Q. Would you read the top of that page, please, sir?

1 A. The very top, "to," or would you like me to start with "I  
2 met?"

3 Q. Starting with "to."

4 A. To Chief Hunter from Assistant Chief Hanson, dated September  
5 21st, 2005. Verbal counseling with Driver Engineer Karl  
6 Taylorson.

7 Q. Does that refresh your recollection about a verbal  
8 counseling that was --

9 A. It does not specifically. No.

10 Q. You don't recall having a verbal counseling with --

11 A. I do not. I do not recall.

12 Q. Do you recall Chief Hanson reminding you of anything in a  
13 meeting concerning obtaining permission to speak to the media?

14 A. I remember being scolded, basically, about talking to the  
15 media.

16 Q. Do you recall being advised, as the exhibit states on the  
17 last line of the memorandum?

18 A. It does seem like something that I would say, so this may --  
19 it may -- it's been quite some time. I honestly don't  
20 remember. It -- you know, saying Chief Hanson -- it may have  
21 been Chief Hanson that -- and I may have been a part of this.  
22 That last statement seems like how I would word something where  
23 it states, and he assured me it would not happen again. That  
24 just sounds like something I would say.

25 Q. Well, what -- what does the last line say? Or just read

1 that final --

2 A. Sergeant Karl Taylorson stated that he understood the  
3 purpose of this counseling session, concerns merited by the  
4 city, and assured me that this would not happen again. I  
5 advised him that the city would not put up with another episode  
6 of speaking to the media without prior approval.

7 Q. So do you believe that -- do you recall Chief Hanson making  
8 that statement to you?

9 A. Do I recall it? No, I do not. Does it sound like something  
10 I would say after he possibly got on to me about being a part of  
11 that? Yes, it does.

12 Q. Well, let me ask you this. As of September 21, 2005, was  
13 that your understanding of the policy of the fire department  
14 concerning speaking to the media? Does that last paragraph  
15 accurately describe your understanding?

16 A. Would I talk to the media today? Absolutely not.

17 Q. Without prior approval.

18 A. Absolutely not.

19 Q. Can you think of any reason you would ever speak to the  
20 media without obtaining prior approval?

21 A. Today?

22 Q. Yes.

23 A. No.

24 Q. So you don't believe you have that right.

25 A. No.

1 Q. Do you believe you should have that right?

2 MR. MCKOON: Judge, I object.

3 A. I believe every American should have that right, yes.

4 THE COURT: I sustain.

5 MR. BROWN: Thank you, sir. No further questions.

6 THE COURT: All right. Mr. McKoon?

7 CROSS-EXAMINATION

8 BY MR. MCKOON:

9 Q. Mr. Taylorson, I won't be too long.

10 A. Thank you.

11 Q. You doing all right?

12 A. Thank you. I'm doing as well as anyone could over here.

13 Q. Are you a weight lifter?

14 A. I do what I can to hold myself together.

15 Q. All right. I just wondered. If I recall this right, the  
16 way you and I got in touch was the plaintiff's lawyers were  
17 trying to get in touch with you --

18 A. Yes, sir.

19 Q. -- and you called Chief Hunter --

20 A. Yes, sir.

21 Q. -- and told him about that.

22 A. Uh-huh.

23 Q. And you were asking about it, I guess about whether you  
24 should talk to them or not or something.

25 A. I was trying to follow proper procedures.

1 Q. Right.

2 A. Yes, sir.

3 Q. And then what happened was, I think, then I called you.

4 A. I called you, and then I had you call me.

5 Q. Yeah. That's right. You wanted me to call you back on your  
6 cell phone.

7 A. That's right. Yes, sir.

8 Q. Because you were in training or something somewhere?

9 A. Yes, sir. I was on my two-week camp with the military, Army  
10 National Guard.

11 Q. All right. So that's how all that came about in the  
12 beginning.

13 A. Yes, sir.

14 Q. And I believe when I called you, you told me Mr. Davis's  
15 lawyers had been trying to get in touch with you, but that you  
16 wanted to stay out of this.

17 A. I was very reluctant to speak. Yes, sir.

18 Q. And in fact, you said, I really don't want anything to do  
19 with this. Do you remember that?

20 A. Yes, sir. I don't think anyone wants anything to do with  
21 something like this.

22 Q. And I believe my -- I believe my retort was, and I don't  
23 blame you, or something like that.

24 A. Uh-huh. Sounds familiar.

25 Q. And when you talked to me, you were asking about whether or

1 not you should talk to the plaintiff's lawyers; is that right?

2 A. I don't recall if I was asking whether I should. I know  
3 that I was explaining to you that I was reluctant to talk. Yes,  
4 sir.

5 Q. All right. And I think my -- and you help me, now, because  
6 I don't want to say anything incorrect. But it's my  
7 recollection that I said, well, you don't have to talk to them  
8 if you don't want to.

9 A. Yes, sir.

10 Q. But I'm not going to tell you not to talk to them. Is that  
11 right?

12 A. That sounds -- that's probably about exactly how you said  
13 it. Yes, sir.

14 Q. I said, you're free to talk to them if you want to and you  
15 don't have to if you don't want to.

16 A. Yes, sir.

17 Q. Is that right? I did say, you know, if you do talk to them,  
18 I'd appreciate if you called me back and tell me what they want  
19 to know.

20 A. Yes, sir.

21 Q. And did you agree to do that?

22 A. Yes, sir.

23 Q. In addition, when I talked to you, when I finally did talk  
24 to you about any substantive matter about what they had called  
25 and asked you about --

1 A. Yes, sir.

2 Q. -- did I at any time tell you all I -- I mean did I always  
3 say all I want is the truth, Mr. Taylorson?

4 A. Yes, sir.

5 Q. And all I want you to do is tell the truth in court.

6 A. Yes, sir.

7 Q. Do you remember if I told you that this would not hurt your  
8 career in any way?

9 A. Yes, sir, you did.

10 Q. And that I wouldn't ever let something like that happen? Do  
11 you remember that?

12 A. I remember you saying the first part without a doubt. I  
13 don't know about the second.

14 Q. Okay. Is there anything that you told me that you haven't  
15 told these people?

16 A. Not that I recall.

17 Q. Okay. So whatever you got to say, everybody knew about it  
18 before you got in here today, didn't they?

19 A. As far as I know, yes, sir.

20 Q. And this is going to sound like a real silly question, but  
21 I'm going to have to ask it --

22 A. Okay.

23 Q. -- because I promise you, I don't think you'll have any  
24 trouble answering it. But you didn't feel threatened by me, did  
25 you?

1 A. Personally, no.

2 Q. Okay. You did feel uncomfortable with the situation,  
3 though.

4 A. Extremely.

5 Q. Is that fair enough?

6 A. Yes, sir.

7 Q. All right. At any time, did you ever tell me, Mr. McKoon, I  
8 just really don't want to talk to you?

9 A. No, sir.

10 Q. Did I ever tell you, Mr. Taylorson, you've got to talk to  
11 me?

12 A. No, sir.

13 Q. And I want to go back over some things that came up in your  
14 testimony a few minutes ago. You were in the group of -- you  
15 were in the union. Am I right?

16 A. Yes, sir. I still am.

17 Q. You're still in the union now?

18 A. Yes, sir.

19 Q. And you participated in that meeting on September the 20th  
20 or around that time -- I don't know if it was September the  
21 20th, but --

22 A. Dates don't help. I can tell you my children's birth  
23 dates --

24 Q. Right.

25 A. -- and this, that, and the other, but that's about it.

1 Q. Well, whenever it was that the meeting was held where y'all  
2 had the meeting at the Mexican restaurant and the reporter came  
3 and all that, do you remember that?

4 A. Yes, sir.

5 Q. You were there.

6 A. Yes, sir.

7 Q. And you were actually quoted in the paper.

8 A. Yes, sir, I believe I was.

9 Q. Is that correct? And I believe one of the quotes was  
10 something to the effect of you were just -- we were just looking  
11 for somebody to help us, be it the mayor or the city manager  
12 or --

13 A. Yes, sir. That's sounds familiar.

14 Q. Let me get the article and make sure I'm quoting it right.  
15 Now, that doesn't mean they quoted you right. But I'm just  
16 saying -- let me get it and see what it says you said. I'm  
17 reading from one of your quotes from the article. I hope the  
18 right person hears it and comes in to help, it be a citizen, the  
19 city manager -- I think it says the council. We're just looking  
20 for a savior.

21 Is that right?

22 A. Yes, sir. I believe so.

23 Q. Do you know if there had been any effort at this point in  
24 time, whenever this happened, for anybody to go up the chain to  
25 the fire chief and then to the city manager with any of the

1 concerns that you-all had?

2 A. Yes, sir, I believe there was.

3 Q. All right. Do you know if anybody had done that?

4 A. I -- I believe I know of -- I know for sure of at least one  
5 definite meeting. I'm sure there were more.

6 Q. Who was president of the union at that time?

7 A. At that time?

8 Q. Yes, sir. In September of 2005.

9 A. Sergeant Davis.

10 Q. Mr. Davis?

11 A. Yes, sir.

12 Q. What was your rank at that time?

13 A. I was sergeant at the time.

14 Q. And what were your duties?

15 A. My duties?

16 Q. Yes, sir.

17 A. I was the driver engineer of the fire apparatus. I was to  
18 get the personnel and crew there as safely as possible, to and  
19 from the scene.

20 Q. And after this incident occurred where all this stuff  
21 appeared in the press and there was this article that said  
22 "Three-Alarm Turmoil" and all that sort of business, do you  
23 recall -- and I believe you said this a few minutes ago, but you  
24 do recall being called in and told what the policies were and  
25 asked to sign off on that?

1 A. I don't -- I don't recall whether it was an actual sit-down  
2 or an open scolding. I actually -- I honestly don't recall.

3 Q. Okay. That's fine. That's fair enough. But did that  
4 incident result in any -- and when I say discipline, I mean like  
5 a written reprimand, a suspension of any kind, any kind of job  
6 action against you other than what you referred to as a verbal  
7 scolding?

8 A. No, sir.

9 Q. And since that time, since 2005, have you been promoted in  
10 the department?

11 A. Yes, sir.

12 Q. Who promoted you?

13 A. Chief Hunter.

14 Q. And I'm going to put you on the spot just for a minute. Has  
15 Chief Hunter been fair with you?

16 A. Yes, sir.

17 Q. Thus far, since he's become chief this last time, has he  
18 been a good chief?

19 A. Yes, sir.

20 Q. When the mayor had the two meetings -- and again, I believe  
21 you said you're not good on dates, but you're sure it's -- he  
22 had one meeting either when he was running or right after he  
23 became mayor and another one when Todd Boatner retired.

24 A. Yes, sir.

25 Q. Is that fair enough?

1 A. Yes, sir, it is.

2 Q. Do you remember going to any other meeting other than those  
3 meetings with the mayor?

4 A. I used to -- I believe I went pretty regularly back then.

5 Yes, sir.

6 Q. I'm sorry. I didn't finish my question.

7 A. Okay.

8 Q. Do you remember going to any other union meetings where the  
9 mayor was present other than those two?

10 A. Not specifically. No, sir.

11 Q. And is it the duty of a firefighter to know the standard  
12 operating procedures?

13 A. Yes, sir, it is.

14 Q. And to know the grievance procedures?

15 A. Yes, sir, it is.

16 Q. And do you understand sitting here today that if you want to  
17 take a matter to city council, you have to take it up the chain  
18 of command first?

19 A. Yes, sir.

20 MR. MCKOON: That's all I have.

21 THE WITNESS: Thank you.

22 MR. MCKOON: Thank you.

23 THE COURT: Any redirect?

24 MR. BROWN: Nothing further, Your Honor.

25 THE COURT: All right. May Captain Taylorson be

1 excused?

2 MR. BROWN: Yes, Your Honor.

3 MR. MCKOON: Yes. Like I said, he's under their  
4 subpoena.

5 THE COURT: All right. You're free to go, and you  
6 don't need to come back.

7 THE WITNESS: Thank you, Your Honor. Thank you.

8 THE COURT: Mr. Steele, do you have -- or Mr. Brown,  
9 either of you, do you have a witness that can -- we can have  
10 some brief testimony from this afternoon without throwing things  
11 out of organization?

12 MR. STEELE: Could we approach, Your Honor?

13 THE COURT: All right.

14 (Bench conference held off the record)

15 THE COURT: This is going to be something that will be  
16 brief that we should get through before six o'clock. I didn't  
17 phrase the question the way one of our other judges did one  
18 time. He asked -- he said he never has after that either. He  
19 asked the lawyers, getting close to the end of the day, if they  
20 had a short witness they could put on. And they called one, and  
21 out walks this little guy about four feet six inches tall. So  
22 he's phrased it a different way, and so did I.

23 All right. Go ahead.

24 Let me explain to you what they're getting ready to do,  
25 members of the jury. This is a deposition that's going to be

1 read to you. In circumstances where somebody can't be present  
2 and the rules are followed, a deposition can be introduced into  
3 evidence when it's taken with the formalities. A person is  
4 sworn in, lawyers on both sides ask questions. It's  
5 transcribed. Everybody is given an opportunity to look it over  
6 and all, and then it's offered. There's been no objection to  
7 this coming in that way. So it should be taken by you to be the  
8 same as if the witness were sitting on the witness stand.

9 Now, Mr. Brown is going to play the role of the  
10 witness, so he's going to be the person they're questioning, not  
11 Mr. Brown, but he's going to play the role of the person  
12 questioned. The lawyers will -- Mr. Steele will ask questions  
13 that the plaintiff's lawyer asked, and Mr. McKoon will ask  
14 questions that the defendants' lawyer asked.

15 All right. Go ahead.

16 MR. STEELE: Thank you, Your Honor.

17 **BRANDON LYNN SHEETS**, the witness, having been duly  
18 sworn, testified via deposition as follows:

19 DIRECT EXAMINATION

20 BY MR. WOODLEY:

21 Q. Mr. Sheets, would you state your full name for the record.

22 A. Brandon Lynn Sheets.

23 Q. My name is Tom Woodley. I'm one of the attorneys  
24 representing David Davis in this lawsuit that he has filed  
25 against the City of Phenix City and against Chief Hunter and

1 City Manager Roberts. Have you ever had your deposition taken  
2 before in another case?

3 A. No, sir.

4 Q. Okay. Have you had a chance to spend some time with perhaps  
5 Mr. McKoon or Mr. Graham about the nature of the lawsuit and the  
6 procedures we'll be following today?

7 A. Other than the deposition last time. Is that what you're  
8 talking about?

9 Q. What deposition last time?

10 A. Last week.

11 MR. MCKOON: He's not had a deposition. When you  
12 listed him, he came up here and we asked him what he knew. And  
13 that was that.

14 MR. WOODLEY: Okay. Good enough.

15 Q. Basically, the procedure is I'll be asking you questions.  
16 We expect you to give answers to the best of your ability. And  
17 this court reporter will take down everything we say today, and  
18 she'll put it in a written transcript form. Do you understand  
19 that?

20 A. Yes, sir.

21 Q. And if at any time you don't understand or hear one of my  
22 questions, stop me immediately and I'll be glad to repeat or  
23 rephrase that question. Do you understand that?

24 A. Yes, sir.

25 Q. You'll have to wait until I finish asking my question before

1 you begin your answer so that we have a clear record. Do you  
2 understand that?

3 A. All right. Yes, sir.

4 Q. Are you currently a union member or member of the Phenix  
5 Firefighters Association?

6 A. Yes, sir.

7 MR. MCKOON: Tom, let me interrupt just a second.

8 Jimmy reminded me of something. In the event he's unavailable  
9 for trial, I think we should use the usual stipulations. You  
10 know, if there's an objection, it should be like a court  
11 objection for the purpose of this deposition.

12 MR. WOODLEY: I agree. I think that's a good statement  
13 on the record, Jim. We do want to preserve his testimony.

14 Q. Because I understand you're going to be overseas in the next  
15 few days; is that correct?

16 A. Yes, sir.

17 Q. Leaving tomorrow?

18 A. Leaving Monday.

19 Q. Going to Iraq?

20 A. I'll be flying to Houston for a week and then from Houston,  
21 we will fly to Dubai and have about five days after --

22 Q. Does that mean you're leaving your job here in the  
23 department?

24 A. Yes, sir.

25 Q. Okay. Do you expect you might come back later on and work

1 for the Phenix City Fire Department?

2 A. Yes, sir. I'm going to try to.

3 Q. Well, good luck over there, and be safe.

4 A. Thank you.

5 Q. So I think you indicated you're currently a union member; is  
6 that right?

7 A. Yes, sir.

8 Q. And a number of firefighters employed with the city are  
9 union members as well, correct?

10 A. Yes, sir.

11 Q. David Davis, as I understand it, was a local union officer,  
12 correct?

13 A. Yes, sir.

14 Q. Have you worked with David Davis when he was working his  
15 shifts in the department?

16 A. Yes, sir. I was on shift with him.

17 Q. Were you in the same station?

18 A. Yes, sir.

19 Q. For a period of years or --

20 A. Altogether, probably between six months and a year,  
21 something like that.

22 Q. And is it your understanding that David was an eight-year  
23 veteran of the Phenix City Fire Department?

24 A. Yes, sir.

25 Q. And that about a year and a half ago, he got fired? Do you

1 understand that?

2 A. Yes, sir.

3 Q. Do you know why he was fired?

4 A. Chain of command. Disobeying the chain of command, I -- I  
5 think is what I understand.

6 Q. Did you hear that he perhaps was fired because he contacted  
7 Mayor Hardin about a proposed ordinance and he was terminated?

8 A. Yes, sir.

9 Q. Let me invite your attention back to the spring of 2006 --  
10 specifically, in April 2006 -- which was the month that  
11 Mr. Davis was terminated. As I understand it, there was a  
12 proposed ordinance that was coming before the city council at  
13 that time that essentially expanded the probationary period from  
14 12 months to 18 months for new hires in the fire and police  
15 departments and code enforcement officers. Does that ring a  
16 bell with you?

17 A. Yes, sir.

18 Q. How did that come to your attention back in the spring of  
19 2006?

20 A. It was first -- it was brought about in a class when they --  
21 it was kind of mentioned but didn't say that it was going to  
22 happen. We were in class, and Chief Waters was teaching the  
23 class. And I said something about probation. He's, like, just  
24 be glad; he said, most departments do 18 months' probation. And  
25 he's, like, don't be surprised if it didn't happen here.

1       And then we were all sitting at the table eating lunch one  
2 day, and we read it in the paper that it was going to happen.

3 And David said --

4 Q. This is on duty at the station?

5 A. Yes, sir. -- said, you know, we need to call the mayor or  
6 call the city representatives or whatever and tell them --

7 Q. City council members?

8 A. -- say that we -- say that we didn't like it because, you  
9 know, we thought that, you know, people that just got hired  
10 couldn't get a job for 18 months, you know. And we were trying,  
11 thinking we could get better people. But we're sitting at the  
12 table and read it in the newspaper. We were all sitting there  
13 saying we didn't like it and we wanted it changed. And then he  
14 was, like, we should call. And he was, like, no, we can't.  
15 Captain Bennett was, like, no, we can't just call.

16 Q. I'm sorry. You have to slow down. Captain who?

17 A. Bennett. And then he was, like, well, I can call on behalf  
18 of the union as a representative.

19 Q. Who said this?

20 A. David Davis. And then it was -- he was, like -- Captain  
21 Bennett was, like, I would call if I was you, but -- but he  
22 wouldn't call.

23 Q. Okay. Let me see if I understand you. This was on duty at  
24 the station?

25 A. Yes, sir.

1 Q. And you were there with -- Mr. Davis was there and Captain  
2 Bennett was there?

3 A. Yes, sir.

4 Q. If I understood you correctly, Captain Bennett said that  
5 someone should call the mayor and city council members about the  
6 proposed ordinance that enlarged the probationary period?

7 MR. MCKOON: Object. I'm not sure that's what he said.

8 Q. Well, put it in your own words.

9 A. Well, Davis said that someone should call.

10 Q. Call who?

11 A. The city council members and say, you know, that someone  
12 should call. Then Captain Bennett was, like, we can't just  
13 call, you know. We can't do that. It might, you know, make  
14 someone mad or something like that. And David was, like, you  
15 know, I can call on behalf of the union, you know. It's the  
16 union. And Captain Bennett was, like, I would call if I was  
17 you.

18 Q. Captain Bennett said to Davis, I would call if I were you?

19 A. Something of that nature. I mean not those exact words.

20 Q. Did Captain Bennett mean at the time when he talked to Davis  
21 that David should call as union representative and communicate  
22 with the city council members about this proposed ordinance?

23 MR. MCKOON: Object to the leading. And it calls for a  
24 mental operation on the part of Captain Bennett. He didn't  
25 know -- he couldn't know what Captain Bennett could have

1 thought.

2 Q. Okay. Well, I'm not asking what Captain Bennett thought.  
3 Just put it in your own words again. What did Captain Bennett  
4 say to Davis about the possibility of contacting the city  
5 council?

6 A. He was just, like, you know, I would call if I was you.

7 Q. Okay.

8 A. Something -- something about that. He wasn't going to call,  
9 but he would call if it was him, if he was in that situation, I  
10 presume.

11 Q. Did you understand that comment from Captain Bennett as  
12 giving permission or authorization for Davis to call?

13 A. Not really sure. It was like we were all sitting around  
14 talking about it. It was just like a random, I would call if I  
15 was you. Like I don't know if it was permission or just, you  
16 know, if I was in that situation.

17 Q. And do you know if Davis in fact followed up and actually  
18 called the mayor or city council members about the proposed  
19 ordinance?

20 A. That's what I heard. I mean I wasn't with him when he  
21 called, but --

22 Q. That's what you heard later?

23 A. That he called?

24 Q. Yes. Did you ever speak to any council members about that  
25 proposed ordinance?

1 A. No, sir.

2 Q. Were you also against a proposed ordinance that expanded the  
3 probationary period for new hires?

4 A. Yes, sir.

5 Q. And why were you and the other firefighters against the  
6 proposed ordinance?

7 MR. MCKOON: Object to other firefighters. I mean how  
8 can he know what other firefighters were for or against?

9 Q. Were other firefighters and union members against the  
10 proposed ordinance?

11 A. Yes, sir.

12 Q. Do you know why?

13 A. Because we were thinking, you know, it's hard enough getting  
14 good people now. You know, if people can't get a second job,  
15 you know -- because we get paid, you know, a pretty good bit,  
16 you know, especially compared to other departments. But a lot  
17 of firefighters depend on a second source of income, you know,  
18 to pay the bills. And, you know, if you can't get a second job  
19 for 18 months, we figured it would be hard enough to get people  
20 up here because of that, if you had to wait 18 months instead of  
21 just 12.

22 Q. So in your judgment, it would be more difficult to get  
23 qualified people to hire on to the department if the  
24 probationary period was longer?

25 A. I wouldn't say qualified. I mean just -- I guess -- I mean

1 regular people. I mean good people, I guess. I don't know.

2 Q. Before today, were you ever asked any questions by city  
3 officials or city attorneys about this conversation that you  
4 just described?

5 A. Yes.

6 Q. Involving Captain Bennett and Mr. Davis?

7 A. Yes.

8 Q. Who asked you about that conversation?

9 A. These two gentlemen here.

10 Q. And you're pointing at Mr. McKoon and Mr. Graham?

11 A. Yes, sir.

12 Q. And when did you have that conversation with the city  
13 attorneys?

14 A. Thursday of last week. Thursday.

15 Q. Can you recall anything else that was said in the  
16 conversation involving Captain Bennett, Mr. Davis, and yourself?

17 A. Not that I can think of. Just about, you know, if we didn't  
18 like it, that -- you know, it would be hard enough to get good  
19 people here, and having 18 months -- other than that, no, sir.

20 Q. Do you know if Captain Bennett was in favor of the enlarged  
21 probationary period or whether he was against it?

22 A. I think he was against it, because we were all talking about  
23 we didn't like it.

24 Q. Is Captain Bennett a member of the union as well?

25 A. No, sir.

1 Q. Has he ever been? Do you know?

2 A. I don't know. I couldn't tell you.

3 Q. There was a newspaper article that came out. In fact, you  
4 can take a look at it. It's open in the binder in front of  
5 you. It's Exhibit 14. This was a newspaper article from the  
6 *Ledger-Enquirer* and was published on September 18, 2005, in  
7 which Mr. Davis and a number of other firefighters and union  
8 members commented on various issues affecting the fire  
9 department. Were you involved in that interview with the  
10 newspaper reporter, if you recall?

11 A. I don't believe I was.

12 Q. You don't believe that you were?

13 A. I -- not that I can remember.

14 Q. Okay. Fair enough. Do you know if as a result of this  
15 newspaper article there was any disruptions in the fire  
16 department performing the duties and responsibilities of the  
17 fire department?

18 A. And this is when?

19 Q. September 2005.

20 A. I couldn't tell you.

21 Q. Did you notice any disruptions in operations or efficiency  
22 in the fire department because this article came out?

23 A. I was just getting on line. I mean -- well, yes, I was just  
24 getting on line then. I -- I couldn't tell you.

25 Q. Based upon your working relationship with Mr. Davis, do you

1 have a view as to whether or not he was a good performer as a  
2 firefighter or a bad performer?

3 A. He did his job well. He was very intelligent. Knew his job  
4 well.

5 Q. Do you know if he has expertise in emergency medical  
6 services as well?

7 A. He was one of our few paramedics that we had. Like we don't  
8 recognize paramedic in Phenix City, but, you know, he was one of  
9 our few paramedics.

10 MR. WOODLEY: I don't think I have any further  
11 questions. I thank you for coming down.

12 CROSS-EXAMINATION

13 BY MR. MCKOON:

14 Q. Mr. Sheets, since this is going to be our only opportunity  
15 to ask you questions, I need to ask you some under oath here  
16 today. When you met Mr. Graham and I, did anybody ever ask you  
17 to say anything but the truth?

18 A. No, sir.

19 Q. All right. In fact, we emphasized to you that we wanted you  
20 to tell the truth as you knew it; is that correct?

21 A. Yes, sir.

22 Q. All right. And this -- this is -- today is your last  
23 official day of work.

24 A. Yes, sir.

25 Q. You're not here today under any subpoena. Nobody gave you a

1 subpoena to come here today, did they?

2 A. No, sir.

3 Q. And the sole reason you're here today is because Mr. Woodley  
4 asked you to come and we asked you from your fire department  
5 position to come up here and give your testimony; is that  
6 correct?

7 A. Today. Yes, sir.

8 Q. All right. Do you or have you had in the last six months a  
9 cell phone?

10 A. Yes, sir.

11 Q. What is your cell phone number?

12 A. 706-527-5093.

13 Q. And who is your service with?

14 A. Nextel.

15 Q. Okay. Is that out of Columbus?

16 A. Yes, sir.

17 Q. How do you know David Davis?

18 A. Fire department previously.

19 Q. Do you also see him at the gym?

20 A. Yes, sir.

21 Q. Do y'all work out together sometimes?

22 A. Well, I see him at the gym. We don't have a workout. Like  
23 if I need a spot, he might come spot me, but we don't do the  
24 same workout program.

25 Q. How old are y'all -- are you?

1 A. 24.

2 Q. And it's mentioned that you're leaving to go to Iraq.  
3 You're not in the military, are you?

4 A. No, sir.

5 Q. Why are you -- why is it that you're going to Iraq?

6 A. The money. Help on the situation, you know. Pay bills.  
7 Get ahead.

8 Q. And who are you going to work for in Iraq?

9 A. Wackenhut.

10 Q. And what is Wackenhut?

11 A. It's a government contract, subcontract.

12 Q. You said you were going over there for money?

13 A. Yes, sir.

14 Q. What type of money are they going to pay you in Iraq?

15 A. A hundred grand.

16 Q. A hundred grand?

17 A. Yes, sir.

18 Q. How long -- are you signing a contract to be a contract  
19 firefighter over there?

20 A. Yes, sir.

21 Q. How long will you be over there?

22 A. One year.

23 Q. And as I understand it, what you told us the other day, some  
24 of that money is tax-free money; is that correct?

25 A. Yes, sir.

1 Q. How much of it is tax-free?

2 A. 84.

3 MR. WOODLEY: I'm going to object on relevance  
4 grounds. I'm not sure where this is going.

5 MR. MCKOON: That's fine. You got your objection. Go  
6 ahead.

7 Q. 84,000?

8 A. 84,000.

9 Q. Okay. 84, 85,000.

10 MR. MCKOON: I'm sorry. That's your words. Go ahead.  
11 You read it.

12 A. 84. 84, 85,000, something like that.

13 Q. So the reason you're leaving the fire service here is you're  
14 doing that voluntarily because you want to go make more money  
15 overseas; is that right?

16 A. Yes, sir.

17 Q. All right. Now, when did you become employed in the Phenix  
18 City Fire Department?

19 A. June of '05.

20 Q. And at some point in time did you join the union?

21 A. Yes, sir.

22 Q. When did you join the union?

23 A. Approximately a year after I got on.

24 Q. Sometime in '06?

25 A. Yes, sir.

1 Q. Were you a union member when this newspaper article appeared  
2 that Mr. -- excuse me -- when this newspaper article that  
3 Mr. Woodley referred to earlier, showed you -- were you a union  
4 member at the time that newspaper article came out in September  
5 of '05?

6 A. No, sir.

7 Q. All right. Were you a union member at the time you said you  
8 were sitting at a table and reading about this ordinance about  
9 changing from a 12-month probationary period to an 18-month  
10 probationary period?

11 A. Yes, sir.

12 Q. Okay. How many union meetings have you attended during the  
13 course of your union membership from the time you joined up  
14 until that day?

15 A. Three to five, somewhere around there.

16 Q. How many?

17 A. Three to five.

18 Q. Three to five. Who would preside over the meetings?

19 A. Who all was there?

20 Q. Who would be the person that was heading the meetings, the  
21 person that was presiding, the head person?

22 A. David would usually do it. Or if he couldn't be there, it  
23 would be another union representative. Just no one in  
24 particular.

25 Q. Did you ever have a meeting that David did not attend?

1 A. Yes, sir.

2 Q. All right. Do you know if anybody kept minutes or notes at  
3 the meetings?

4 A. Not sure.

5 Q. You just never saw that happen?

6 A. I didn't. No, sir.

7 Q. Did you ever attend a meeting where somebody stood up and  
8 said, now we're going to read the minutes from the last meeting  
9 and then vote on the approval of those minutes?

10 A. No, sir.

11 Q. So you don't know whether anybody took minutes or not.

12 A. No, sir.

13 Q. Now, going back to either the late part of 2005 or the early  
14 part of 2006, I would say December of '05 or January of '06,  
15 sometime in that time frame, do you recall where there was a  
16 called meeting of the people on your shift where Chief Hunter  
17 and Chief Waters came around and explained there may be a change  
18 in the probationary period from 12 to 18 months?

19 A. I'm thinking maybe.

20 Q. Do you recall that happening?

21 A. I was trying to think. I think it did happen.

22 Q. Do you remember getting up and asking a question at that  
23 meeting since you would have been one of the people that was  
24 kind of a new hire and in your probationary period at that time?

25 A. That it would affect me?

1 Q. Yes, sir.

2 A. I know I said something to Chief Waters outside of any  
3 meetings. It was just me and him, one on one. I talked to him  
4 about it, and he said it wouldn't affect me. Then I asked him  
5 if it would affect the guys that are in school at the time, and  
6 he said -- I think he said it wouldn't affect them either.

7 Q. Okay. All right. Do you remember when that conversation  
8 took place?

9 A. I think it was after David got fired, actually.

10 Q. You think it was after David got fired?

11 A. Yes, sir.

12 Q. So you didn't ask about the probationary period being  
13 extended before it actually happened?

14 A. What's that, now?

15 Q. Are you -- all right. Are you telling me that at the time  
16 you had the conversation with Chief Waters about your  
17 questioning about the probationary period affecting you that it  
18 was after it had already been implemented? Is that what you're  
19 saying?

20 A. Yes. Yes, sir. Well, I -- I couldn't really tell you when  
21 it got implemented. I know they were talking about -- when we  
22 had a conversation, they were talking about bringing it about  
23 and that we need to call and say, you know, we didn't like it.  
24 But I don't know if it was in effect then or when it became --  
25 when it wasn't in effect. So --

1 Q. Well, there wouldn't be any need to call the city council  
2 about something you didn't like if it had already happened,  
3 would it?

4 A. No, sir.

5 Q. Okay.

6 A. Well, I guess not, no.

7 Q. All right. So all I'm trying to do is kind of get a time  
8 frame on this. And my question, basically, is do you recall  
9 whether or not there was a discussion -- and when I say a  
10 discussion, a presentation by Chief Hunter and Chief Waters to  
11 your shift where you were there and heard them say way in  
12 advance of this ordinance being passed that there was talk about  
13 going from 12 to 18 months as a probationary period for new  
14 hires?

15 A. I can't remember. What I remember was we were in class.  
16 Chief Waters brought it up in class about, you know, don't be  
17 surprised if it did happen.

18 Q. Well, did you at that time in class -- did you ask a  
19 question about that?

20 A. Not sure. I probably would have, though.

21 Q. And that's because you got hired in June of '05?

22 A. Yes, sir.

23 Q. And so if something were happening towards the end of '05 or  
24 '06, you were still in your probationary period, weren't you?

25 A. Yes, sir.

1 Q. So you were one of the people that would have been most  
2 concerned, I take it, about whether or not it affected you.

3 A. Yes, sir.

4 Q. Is that right? Now, let's go to the incident that you  
5 talked about where you say you were sitting at the table with  
6 David Davis and Captain George Bennett. And it's my  
7 understanding from your earlier testimony that you said that  
8 you -- that y'all were sitting there, and somebody read  
9 something in the paper about the probationary period being  
10 changed from 12 -- being changed from 12 to 18 months.

11 A. Yes, sir.

12 Q. Who read it?

13 A. I couldn't tell you.

14 Q. You don't remember reading it?

15 A. I mean the paper was passed around. I -- I don't remember  
16 right off hand.

17 Q. Well, who brought it up?

18 A. David Davis.

19 Q. David brought it up? And so you were -- you were there and  
20 David was there and Captain Bennett was there.

21 A. Yes, sir.

22 Q. And it's my understanding of your previous testimony a few  
23 minutes ago that David said something about calling somebody.

24 A. Yes, sir.

25 Q. And Captain Bennett told him what, again, not to do that?

1                   MR. WOODLEY: That's not his testimony. It's just the  
2 reverse. I would object to that.

3 Q. Okay. Well, tell me, what was the first thing that George  
4 Bennett told David Davis about whether or not any call should be  
5 made to the city council.

6 A. He was, like, you know, I probably wouldn't do that because,  
7 you know, might be pretty much stepping on toes. I mean I  
8 couldn't really tell you. It might make somebody mad. And  
9 David returned with, you know, I can call them on behalf of the  
10 union.

11 Q. So let me stop you a minute. So the first thing George  
12 Bennett told him was not to call somebody.

13 A. Right.

14 Q. Is that right?

15 A. Yes, sir.

16 Q. Because it might step on somebody's toes? Is that what  
17 you're telling me?

18 A. Well, pretty much something like that. Those aren't the  
19 exact words, but something like that.

20 Q. Well, in fact --

21                   MR. WOODLEY: You're going to have to let him finish  
22 his answer without interrupting him.

23                   Were you finished with your answer?

24                   THE WITNESS: I think.

25 Q. You got anything else you want to add to that answer?

1 A. I forget what the question was. Okay. What's the question  
2 again? I'm sorry.

3 Q. Okay.

4 A. What was said?

5 Q. Here's where he were, as I understand it. Mr. Davis had  
6 just remarked that he thought that he should call somebody,  
7 right?

8 MR. MCKOON: I'm sorry. Go ahead.

9 A. Right.

10 Q. Meaning a city council member?

11 A. Right.

12 Q. And Captain Bennett told him he wouldn't do that if he were  
13 him because it might step on somebody's toes. Is that where we  
14 were?

15 A. Right. It might mess --

16 Q. Well, I don't have any more questions. I just want to know,  
17 is that where we were? Yes or no.

18 A. Yes.

19 MR. WOODLEY: Object to the leading nature of the  
20 questions.

21 MR. MCKOON: Well, it's cross-examination. I can lead  
22 him all I want to.

23 MR. WOODLEY: You can give your own answers in your own  
24 words.

25 MR. MCKOON: It's cross-examination. I can lead him

1 all I want to.

2 Q. So the next thing that happened, as I understand it, was  
3 David made some further remark about, well, he could call as a  
4 union representative.

5 A. Yes, sir.

6 Q. Now, before we get into that part of it, did you understand  
7 in your training as a fireman, as a new fireman, that there was  
8 such a thing as a chain of command?

9 A. Yes, sir.

10 Q. And did you understand that if you had a problem related to  
11 your work, that you should take it to your supervisor?

12 A. Yes, sir.

13 Q. All right. And as far as you knew at that time, this didn't  
14 concern Mr. Davis, did it, from the standpoint of his  
15 employment?

16 A. The 18 months?

17 Q. Right.

18 A. It wouldn't have affected him.

19 Q. It wouldn't have affected him at all, would it?

20 A. No, sir.

21 Q. Okay. And so the only person in the room at that time or at  
22 the table at the time that it might have had an effect on would  
23 have been you; is that correct?

24 A. Yes, sir.

25 Q. All right. So when you're having this discussion -- we're

1 now at the point where Mr. Davis says, well, he will call as  
2 union president -- are you telling me that Mr. Bennett reversed  
3 field and said -- when he had previously said don't call  
4 somebody, he now told or encouraged him to call somebody?

5 A. He was saying I would call if I was you.

6 Q. Okay. So he went from saying -- almost within a space of a  
7 minute or two saying don't call to saying call somebody --

8 A. Yes, sir.

9 Q. -- is that right? And who all overheard that?

10 A. Me. Us three.

11 Q. Just the three of y'all.

12 A. There was somebody -- I mean somebody else was at the  
13 station, too. I'm not sure if they were sitting at the table.  
14 I want to say it was Daniel Dixon was down there with us.

15 DEPOSITION COURT REPORTER: What was that last name  
16 again?

17 THE WITNESS: Dixon.

18 Q. Was he sitting at the table?

19 A. I'm not sure.

20 Q. All right. So after that happened, you later learned that  
21 Mr. Davis actually called the mayor or some members of the  
22 council -- city council.

23 A. Yes, sir.

24 Q. All right. And then he was terminated; is that correct?

25 A. Yes, sir.

1 Q. All right. When is the -- have you talked to Mr. Davis  
2 about this within the last week or so?

3 A. No, sir.

4 Q. You have not talked to him at all?

5 A. I've talked to him at the gym, but it's pretty much about me  
6 leaving.

7 Q. You haven't spoken with him about this issue at all?

8 A. About the depositions? I mean he -- he told me they would  
9 probably be coming up.

10 Q. Okay. But when did you talk with him about that?

11 A. Not sure.

12 Q. Okay. You don't know?

13 A. No, sir.

14 Q. Has it been in the last month?

15 A. I think so.

16 Q. Did you talk to him yesterday?

17 A. I don't think so.

18 Q. You don't think you talked to him yesterday. Well, you  
19 would remember that, wouldn't you?

20 A. Yes. I mean I've -- I've been busy, but I -- I don't think  
21 I've talked -- I don't think -- I didn't talk to him yesterday.

22 Q. Okay. Well --

23 A. Hold on. No, I didn't talk to him yesterday.

24 Q. You did talk to him?

25 A. No, I didn't.

1 Q. You did not?

2 A. No, sir.

3 Q. You did not.

4 A. No, sir. I talked to him what day? Two days ago. A couple  
5 of days ago.

6 Q. Two days ago?

7 A. At the gym.

8 Q. At the gym. And what was that discussion about?

9 A. I take it back. It wasn't two days ago. I'm trying to  
10 think. It was a couple of days ago. I wouldn't say two days  
11 ago. I saw him at the gym here recently within the past five or  
12 six days.

13 Q. And what was the topic of your conversation?

14 A. Me leaving.

15 Q. Okay. You didn't say anything about your deposition?

16 A. No, sir.

17 Q. Or what you would testify to in your deposition?

18 A. I -- I did talk to him about that, yes, sir.

19 Q. Tell me about that discussion.

20 A. It was just -- I was like, they asked me some questions, you  
21 know, about what happened, told him what happened, what I said.

22 Same things we're talking about here.

23 Q. Okay. Did you ever get any phone calls from Mr. Davis after  
24 the day you sat there at the table with him and these events  
25 transpired that you have testified about regarding polling you

1 as to your opinion as to what should happen about this?

2 A. No, sir.

3 Q. Do you know of any -- okay. Do you know of anybody else  
4 that got a phone call like that?

5 A. No, sir.

6 Q. All right. Mr. Woodley asked you if other firefighters were  
7 concerned about this. As I understand it, how long was it  
8 between the time that you know that you-all had this discussion  
9 at the table and Mr. Davis called the mayor?

10 A. I'm not sure.

11 Q. Well, did you ever go to a union meeting where this was  
12 discussed?

13 A. No, sir.

14 Q. Did you ever talk to any other firefighters about this other  
15 than Mr. Davis and George Bennett about this issue?

16 A. Yes, sir.

17 Q. Okay. Who did you talk to about it?

18 A. I'm not sure. Probably Lund. I mean it was -- it was a big  
19 topic when it first come about. I mean a lot of people talked  
20 about it. I'm not sure.

21 Q. Who else -- you said Eric Lund. Who else?

22 A. I'm not sure.

23 Q. You can't think of another person sitting here today?

24 A. I mean I talked to Chief Waters about it.

25 Q. Have you told me everything you and Chief Waters talked

1 about?

2 A. I guess.

3 Q. I mean about this subject.

4 A. Yes, sir.

5 Q. All right. Was Chief Waters truthful with you when he  
6 answered your questions?

7 A. He told me it wouldn't affect the guys in the school. I  
8 think it did. I mean he might not have known. I mean he  
9 wouldn't -- he wouldn't lie about it. I mean --

10 Q. Did he more or less have an open-door policy? If you had a  
11 problem, you could go in and talk with him about it?

12 A. Yes, sir.

13 Q. Do you know any other firefighters that had a problem with  
14 this particular policy other than Eric Lund, if he did -- I mean  
15 you told me you talked to him about it; I don't know what --  
16 that you told me he had a problem with it -- other than you and  
17 Mr. Davis?

18 A. There were other people that didn't like it, but I mean I  
19 couldn't tell you.

20 Q. You don't know the name of any of them; is that right?

21 A. That's right.

22 Q. And all of those people at the time that you would have  
23 talked to them about it were people that were already hired,  
24 already firefighters --

25 A. Yes, sir.

1 Q. -- is that right? And this policy didn't have any effect on  
2 them.

3 A. No, sir. I think the only one it might have had an effect  
4 on --

5 Q. Just one other thing. Do you know whether or not the change  
6 in the policy had any effect on recruitment of new firefighters?

7 A. Like it would affect anyone that started applying for it?

8 Q. No, sir. I'm saying in your position as a firefighter with  
9 the City of Phenix City, up until today, do you know if this  
10 policy of changing from a 12-month probationary period to an  
11 18-month probationary period for new hires had any effect on the  
12 recruitment of new firefighters for the City of Phenix City?

13 A. No, sir. I wouldn't be able to tell that.

14 MR. MCKOON: That's all.

15 REDIRECT EXAMINATION

16 BY MR. WOODLEY:

17 Q. Just a couple of follow-up questions, Mr. Sheets, if I may.  
18 Again, going back to this conversation you testified about at  
19 the station around the table involving Captain Bennett and  
20 Mr. Davis on that subject, have you had any recent conversations  
21 with Captain Bennett, say in the last six months, in which you  
22 may have discussed that earlier conversation about the proposed  
23 ordinance enlarging the probationary period?

24 A. Before the last time we sat down when I went up there to  
25 pick up Dixon, he thought he didn't say it. He said he don't

1 remember saying that. And I described the whole situation to  
2 him then, too.

3 Q. You just said Captain Bennett could not recall having said  
4 what you have testified about today?

5 MR. MCKOON: I'm going to object to what Captain  
6 Bennett told him outside of here. It's hearsay.

7 MR. WOODLEY: Go ahead.

8 A. All right. I went up there to pick up Dixon. That  
9 conversation was up, and he said don't -- he don't remember  
10 saying that. And then I told him the whole -- everything I've  
11 told y'all about the whole situation, about the whole talk at  
12 the table. And I told him about that, and he said he still  
13 didn't remember that conversation.

14 Q. And when was this more recent conversation you're talking  
15 about now with Captain Bennett?

16 A. Thursday.

17 Q. Of last week?

18 A. When I picked up Dixon to come down here for the -- when we  
19 talked last time.

20 Q. And you said that Mr. Dixon was involved in that  
21 conversation around the table concerning the proposed ordinance  
22 and the enlargement of the probationary period?

23 A. He -- he might have been.

24 MR. MCKOON: I object. That's not what he said. But  
25 anyway, he can say whatever he wants to.

1 Q. Was Dixon involved in that conversation?

2 A. He wasn't.

3 Q. He was not?

4 A. Not -- not that I can remember. I mean he --

5 Q. So the only three individuals involved in that earlier  
6 conversation about the probationary period was yourself, Davis,  
7 and Captain Bennett. Is that accurate?

8 A. Right. Dixon might have. I mean he was -- he -- I think he  
9 was down there at the station with us, because when I went up  
10 there to pick him up and told him that situation, Dixon said he  
11 can't remember, you know, what -- you know, what was said at the  
12 table then. I didn't know if he was at the table. He might  
13 have been sitting on the couch. He might have been in another  
14 room.

15 MR. WOODLEY: Fair enough. I don't have any further  
16 questions. Thanks for coming.

17 MR. MCKOON: Just a couple more things.

18 RECROSS-EXAMINATION

19 BY MR. MCKOON:

20 Q. Have you ever heard Mr. Davis use the term the blue shirts  
21 versus the white shirts?

22 A. No, sir.

23 Q. Never heard him say that. Did Mr. Davis ever tell you he  
24 felt like the white shirts were against him?

25 A. Not that I can remember.

1 Q. Never heard anything like that.

2 A. No.

3 MR. MCKOON: All right. That's all.

4 MR. WOODLEY: Thanks for coming.

5 THE COURT: Okay. You can come down.

6 Well, obviously that took a little longer than the  
7 lawyers thought it was going to take, but let's wrap it up for  
8 today. We're going to start tomorrow morning at nine o'clock.  
9 I think you'll be happy to hear me tell you that because of a  
10 matter that I can't change, we're going to quit by 4:30 tomorrow  
11 afternoon. So we won't be going this late in the day.

12 While you're away, remember not to discuss it with  
13 anybody. Don't watch anything on television or read the  
14 newspaper if there's anything in it, or radio. Don't talk among  
15 yourselves or with anyone else about it. Just forget about it  
16 and go on to something else tonight. And I'll ask you to be  
17 back here tomorrow morning in time to start back at nine  
18 o'clock. We'll be in recess until that time.

19 (Jury out at 6:13 p.m.)

20 THE COURT: All right. Have a seat. There are a  
21 couple of things I want to mention before we break, and then  
22 I'll see if any of the lawyers have anything to bring up. We  
23 are going to have to stop at 4:30 tomorrow afternoon. I've got  
24 a matter that can't be changed that I have to be involved in.

25 As we go along, the question of just what

1 interrogatories are going to be submitted to the jury are more  
2 and more concerning me and I'm sure concerning the lawyers as  
3 well. When you submitted the requested form earlier, the case  
4 was in a different situation than it is now with the claims. So  
5 I want to ask the lawyers to start seriously thinking about and  
6 considering what you were going to request as special  
7 interrogatories to be submitted to the jury, what you think the  
8 fact issues are that the jury should answer. And go ahead and  
9 be giving that some thought so we won't have to wait till later  
10 in the week or toward the end of the trial to take that up. I'd  
11 like for you at any time -- as soon as either side can get  
12 together your thinking on it at this point, exchange it with  
13 each other and pass it on to me. And the situation may change  
14 after that, but let's keep in touch with where we are on the  
15 interrogatories that might be asked.

16 The other thing is -- and I'm not going to cut anybody  
17 short on the witnesses you present, and I don't like to -- I  
18 don't like to interrupt lawyers during their questioning to tell  
19 them to move on. But I'm going to ask all the lawyers to move  
20 this thing along. I don't want you to be repetitious about  
21 things that have been asked just for the sake of emphasizing  
22 it. And let's pick it up. Pick up the pace and move this thing  
23 along so we're not going to be having any danger of cutting  
24 anybody short at the end of the week.

25 All right. Is there anything we need on the record

1 before we break, Mr. Steele?

2 MR. STEELE: No, Your Honor.

3 THE COURT: Mr. McKoon?

4 MR. MCKOON: I don't think we need anything on the  
5 record. I just -- if he wants any of these folks that we've had  
6 here by agreement to be here tomorrow, he just needs to let me  
7 know so I can --

8 THE COURT: All right. Mr. Steele, you'll let  
9 Mr. McKoon know who you need to have here tomorrow?

10 MR. STEELE: Sure.

11 THE COURT: All right. We'll be in recess till nine  
12 o'clock.

13 MR. MCKOON: Thank you.

14 (Evening recess at 6:16 p.m.)

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COURT REPORTER'S CERTIFICATE

I certify that the foregoing is a correct transcript  
from the record of proceedings in the above-entitled matter.

This 16th day of May, 2008.

/s/ Risa L. Entrekin  
Registered Diplomate Reporter  
Certified Realtime Reporter  
Official Court Reporter

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